

Brigham Young University Law School BYU Law Digital Commons

Utah Supreme Court Briefs

2000

Utah Copper Company, a Corporation v. Public Utilities Commission of Utah, and Utah Power and Light Company : Petition for Writ of Certiorari

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Dickson, Ellis, Lucas and Adamson; Attorneys for Plaintiff.

Unknown.

Recommended Citation

Legal Brief, *Utah Copper v. Public Utilities Commission*, No. 3582.00 (Utah Supreme Court, 2000).
https://digitalcommons.law.byu.edu/byu_sc2/11

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
KFU
45.9
.S9
DOCKET NO.

UTAH SUPREME COURT

BRIEF.

3582 CP

In the Supreme Court of the State of Utah

UTAH COPPER COMPANY,
a Corporation,

Plaintiff,

vs.

PUBLIC UTILITIES COMMIS-
SION OF UTAH, and UTAH
POWER & LIGHT COM-
PANY, a Corporation,

Defendants.

No. 3582.

Record on Certiorari Proceedings.

DICKSON, ELLIS, LUCAS & ADAMSON,

Attorneys for Plaintiff.

INDEX.

	Page
Petition and Motion for Certiorari or Writ of Review.....	1
Affidavit on Application for Certiorari or Writ of Review	4
Exhibit "A" to Affidavit.....	16
Exhibit "B" to Affidavit.....	34
Exhibit "C" to Affidavit	35
Exhibit "D" to Affidavit.....	36
Exhibit "E" to Affidavit.....	38
Exhibit "F" to Affidavit.....	40
Exhibit "G" to Affidavit.....	41
Exhibit "H" to Affidavit.....	44
Exhibit "I" to Affidavit	51
Exhibit "J" to Affidavit.....	52
Exhibit "K" to Affidavit	52
Exhibit "L" to Affidavit.....	53
Exhibit "M" to Affidavit	57
Exhibit "N" to Affidavit	71
Exhibit "O" to Affidavit	88
Order for Writ of Certiorari or Review.....	91
Writ of Certiorari or Review	92
Proof of Service.....	94
Stipulation adding party	95
Order Making Power Company party	97

In the Supreme Court of the State of Utah

UTAH COPPER COMPANY,
a Corporation,

Plaintiff,

vs.

PUBLIC UTILITIES COMMIS-
SION OF UTAH,

Defendant.)

No. 3582.

Petition and Motion
For Certiorari or
Writ of Review.

*To the Honorable, the Supreme Court of the State of
Utah, and Honorable E. E. Corfman, Chief Justice,
Thereof:*

Comes now the above named plaintiff, the Utah Copper Company, by and through its attorneys herein, and moves and petitions, this the Supreme Court of the State of Utah, to make an order, and to cause to be issued out of and under the seal of this Court, a Writ of Certiorari or Review, in accordance with the prayer of the annexed affidavit of John M. Hayes, directed to the above named defendant, the Public Utilities Commission of Utah, commanding said Commission to certify and return to this court, within a time not exceeding thirty days from the issuance of such Writ, its, said Commission's, record in said Cases 230 and 248, including a transcript of the testimony and evidence, together with all exhibits or copies thereof introduced, and of the pleadings and records and

proceedings, and all orders, proofs, and papers of every nature whatever, in said causes numbered 230 and 248, or concerning or relating to the same, together with all data, writings, memoranda, schedules and tariffs, of which said Commission took judicial notice in said causes, to the end that this Honorable Court may be certified of and review all the proceedings, decisions and orders, in said causes, and may further act thereon as of right and according to law ought to be done, and that said decision and orders, each and all of them, may be reviewed, set aside, cancelled, annulled, reversed, and held for naught; and

Plaintiff further petitions and prays that this Honorable Court review said proceedings, and orders, of said Commission, in Case 230, and that the same, said decisions and orders, be reversed, cancelled, set aside, annulled and held for naught; and that the plaintiff have judgment for its costs in this action expended and for such other and further relief in the premises as to the Court may seem just, meet and proper.

This application is made on the grounds and for the reasons set forth in the annexed affidavit of John M. Hayes, made in this action.

Dated this 2nd day of December, 1920.

DICKSON, ELLIS,

LUCAS & ADAMSON,

Attorneys for Plaintiff.

STATE OF UTAH,
COUNTY OF SALT LAKE. } ss.

John M. Hayes, being first duly sworn on his oath, deposes and says: That he is and for many years last past has been, an officer of the above named plaintiff, the Utah Copper Company, a corporation, to-wit: the Treasurer thereof; and makes this verification for and on behalf of said plaintiff corporation; that he has read the above and foregoing petition and motion for certiorari or writ of review, and the affidavit therein referred to, and upon which the same is grounded, and knows the contents thereof; and that the same is true of his own knowledge, except as to matters and things therein stated upon information and belief, and as to those matters and things, he verily believes the same to be true, and the same is true, to the best of his knowledge, information and belief.

(Signed)

JOHN M. HAYES.

Subscribed and sworn to before me this 2nd day of December, A. D. 1920.

(Signed)

S. B. LAMKIN,

Notary Public, in and for Salt Lake County,

(Seal) State of Utah.

UTAH COPPER COMPANY,
a Corporation,

Plaintiff,

vs.

PUBLIC UTILITIES COMMIS-
SION OF UTAH,

Defendant.

Affidavit on Applica-
tion for Certiorari or
Writ of Review.

STATE OF UTAH,
COUNTY OF SALT LAKE. } ss.

John M. Hayes, of lawful age, being first duly sworn,
on his oath deposes and says:

1. That the Utah Copper Company (hereinafter called the "Copper Company"), is, and during all the times hereinafter mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, authorized to do business, and doing business, in the State of Utah, and is and has been the owner of, and in the possession of, certain mining claims and mining properties situate, lying and being in Salt Lake County, State of Utah, and is, and during all said times has been, engaged in the business of developing, mining, extracting, removing and disposing of ores, metals and minerals contained upon, in and beneath the surface of said mining claims and properties so owned and possessed by it as aforesaid.

2. That deponent is and during all the times hereinafter mentioned was, the treasurer of said Copper Company; and the facts herein set forth are within the knowledge of deponent; and this affidavit on application for Certiorari or Writ of Review is made by deponent for

and on behalf of, and as an official of, said Copper Company, the corporation beneficially interested in these proceedings.

3. That the Utah Power & Light Company (hereinafter called the "Power Company"), is, and during all the times hereinafter mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of Maine, authorized to do business and doing business in the States of Utah and Idaho, and does, and during all the times hereinafter mentioned did, own and operate an electric power system and service in said States of Utah and Idaho, consisting of electric power generating and service plants and transmission and distribution lines, appliances and apparatus.

4. That on or about the first day of January, 1913, said Power Company and said Copper Company, duly made and entered into a certain agreement or contract in writing, a true copy of which is hereto attached and marked Exhibit "A," and hereby made part hereof. And said Power Company and said Copper Company thereafter, by mutual consent and agreement, modified said contract or agreement (said Exhibit "A") by two certain letters or agreements in writing bearing date respectively March 3, 1913, and December 30, 1913, true copies whereof are hereto attached and marked respectively Exhibit "B" and Exhibit "C," and are hereby made part hereof.

5. That at the time said contract or agreement, said Exhibit "A," was made and entered into as aforesaid, and at the time when said modifications were made, said

Exhibits "B" and "C," there was no constitutional or statutory provision or enactment, and no rule or principle of law which prohibited, inhibited or limited the same, or any part or portion or term or provision thereof, and the same, and the whole thereof, was and were lawful when made and entered into.

6. That neither said contract, nor any modification thereof, was entered into or made under or by virtue of, or pursuant to, any ordinance or franchise of, or granted by, the State of Utah, or any municipal corporation or legal subdivision thereof, or any other governmental agency, and the parties thereto were competent and authorized by law to make and enter into the same.

7. That said contract was, and as appears on its face was, founded upon an adequate consideration when made and entered into.

8. That ever since said contract was made and entered into, the same has been fully recognized, kept and performed, by both parties thereto, and neither party thereto is seeking, or has sought to have the same set aside, terminated, abrogated, annulled or modified; and neither the public, nor any member thereof, has ever complained of the same or objected thereto, nor has any one ever so done except the defendant, the Public Utilities Commission of Utah, as hereinafter set forth.

9. That on February 27th, 1917, the Legislature of the State of Utah passed an Act (hereinafter called the "Utilities Act"), entitled,

“An Act Creating a Public Utilities Commission, defining public utilities, prescribing the powers and duties of the Commission and the duties of public utilities, providing penalties for violation of provisions of the Act, appropriating money to carry out its purposes, and repealing Sections 454, 455 and 456, Compiled Laws of Utah, 1907,”

which said Act was approved by the Governor of the State of Utah on March 8, 1917, and took effect upon its said approval, and said Act became Chapter 47 of the Laws of Utah of 1917, and said Act ever since its said approval has been and now is in full force and effect; and said Utilities Act was incorporated into and brought down in the Compiled Laws of the State of Utah of 1917, and is now Title 91 thereof, commencing with Section 4775 and ending with Section 4853 thereof.

10. That in and by said Utilities Act creating the Public Utilities Commission of Utah (hereinafter called and referred to as the “Commission”), it is provided that said Commission may sue and be sued by that name.

11. That in and by said Utilities Act it was and is provided that nothing contained in said Act should or shall be construed “to prevent the carrying out of contracts for free or reduced rate passenger transportation or other public utility service heretofore made founded upon adequate consideration and lawful when made.”

12. That on the 8th day of April, 1918, the defendant Commission issued its written tariff circular No. 3, a true copy whereof is hereto attached and marked Exhibit “D,” and hereby made part hereof.

13. That on the 23d day of October, 1918, defend-

ant Commission issued its supplement No. 1, to tariff circular No. 3, a true copy of which said supplement is hereto attached and marked Exhibit "E," and hereby made part hereof.

14. Thereafter said Power Company, on or about the 23d day of November, 1918, filed with said defendant Commission a number of contracts and among them the said contract between said Power Company and the Copper Company, said Exhibit "A," and its said modifications; and at the same time said Power Company filed with said Commission certain printed general rules and regulations applicable to all classes of electric service of said Power Company and also filed with said Commission a certain tariff or schedule, a true copy whereof is hereto annexed and marked Exhibit "F," and hereby made a part hereof. That said defendant Commission merely received said contracts and schedule and directed its Secretary to file the same, and insofar as such action on its part involved an inferential or implied approval of the said contracts and schedule by said Commission, if at all, exactly the same formalities were observed respecting said contract as respecting said schedule or tariff. And the plaintiff, the Copper Company, had no notice or knowledge of such action on the part of said Power Company or said Commission, or either of them, and never has had an opportunity to be heard with respect thereto. And said Commission never had any hearing on or respecting said tariff or schedule or any of the rates therein named, or the reasonableness thereof or any thereof, and said Commission did not make and never has made any finding

whatsoever regarding said schedule or tariff or the rates therein named or the reasonableness thereof.

15. That thereafter and on September 27, 1919, said defendant Commission, of its own motion, made and issued its certain order, a true copy whereof is hereto attached and marked Exhibit "G," and hereby made part hereof, and thereby said Commission initiated and commenced before itself that certain matter or proceeding known as Case 230, entitled "In the Matter of the Investigation of Special Contracts of the Utah Power & Light Company, for electric service." And a copy of said order, said Exhibit "G," was served on the plaintiff Copper Company. And the contract of the Copper Company referred to in said order, said Exhibit "G," was and is the same contract entered into by and between said Power Company and said Copper Company, a true copy whereof is hereto attached as Exhibit "A," as aforesaid, with the modifications thereof, as aforesaid.

16. That on the return of said order, said Exhibit "G," and before said defendant Commission had proceeded further thereunder or taken any evidence or had any hearing thereon or thereunder, the plaintiff, the Copper Company, entered a special appearance before said Commission and filed a motion to quash, vacate, set aside and annul said order, a true copy of which said special appearance and motion is hereto attached and marked Exhibit "H," and hereby made part hereof.

17. That on January 14, 1920, said defendant Commission made and issued and served upon the plaintiff, the Copper Company, a notice of hearing, a true copy

whereof is hereto attached and marked Exhibit "I," and hereby made part hereof.

18. That on the 27th day of January, 1920, said motion of the plaintiff, the Copper Company, said Exhibit "H," was by the defendant Commission overruled and denied and said Commission then and there held and ruled that it did have jurisdiction to proceed with said Case No. 230, and refused to recognize and disregarded the objections of said Copper Company in the premises and claimed and assumed and still claims and assumes to have jurisdiction of said matter and in said proceedings.

19. That on February 14, 1920, said defendant Commission made and issued and served on said Copper Company a notice of hearing, a true copy whereof is hereto attached and marked Exhibit "J."

21. That on February 16, 1920, said defendant Commission made and issued and served on said Copper Company an order, a true copy whereof is hereto attached and marked Exhibit "K," and hereby made part hereof.

22. But notwithstanding said order, said Exhibit "K" said Commission announced that it merely postponed further hearing in said proceedings in said Case No. 230 pending the determination of two certain applications for writs of prohibition, brought and then pending in this the Supreme Court of the State of Utah, against said Commission by the Union Portland Cement Company and the Ogden Portland Cement Company, which were thereafter denied. And said Commission claimed and assumed and still claims and assumes to

have and to exercise, or attempt to exercise, jurisdiction of said matter and in said proceeding.

22. Meanwhile, and in December, 1919, said Power Company filed its Petition whereby it initiated Case No. 248 before the Public Utilities Commission of the State of Utah, entitled "In the Matter of the Application of Utah Power & Light Company for permission to increase its power rates," wherein and whereby the Power Company petitioned the Commission, after hearing, to fix rates and charges upon the Power Company's business, and to authorize the filing of such schedules for various forms of power service, as would be just and reasonable, and that the Commission investigate the matter and cancel the then and now existing schedules of the Power Company, as published and on file with the Commission, and permit the filing of new and increased schedules.

23. On March 4, 1920, said Case No. 248, before said Commission, entitled "In the Matter of the Application of the Utah Power & Light Company for permission to increase its power rates," as aforesaid, came on for hearing before said Commission, and said hearing was proceeded with, and the evidence therein taken and the same was closed on or about June 8, 1920, so far as the taking of testimony was concerned. And in said case the evidence was taken down by official stenographers and duly transcribed and consisted of about 2,855 pages, together with numerous and voluminous exhibits, all of which, together with the complete record in said case, has at all times been and is now in the possession of, and in the cus-

tody of, and under the control of, the defendant, the Public Utilities Commission of Utah.

24. Thereafter and in June, 1920, said case No. 230, entitled "In the Matter of the Investigation of Special Contracts of the Utah Power & Light Company, for electric service," as aforesaid, came on for hearing. And on June 23, 1920, the date when said Case No. 230 was called for hearing, the plaintiff, the Copper Company, duly filed in said case, with said Commission, its answer in said case, a true copy whereof is hereto attached and made part hereof, and marked Exhibit "L." And thereafter said Commission proceeded with the taking of testimony and evidence in said Case No. 230, and completed the same on or about June 28, 1920. And the evidence and testimony so taken consisting of about a thousand pages, together with numerous and voluminous exhibits, was duly taken down and transcribed by official stenographers. And all of said evidence and exhibits, together with the complete record in said case, has at all times been, and is now, in the possession of, and in the custody of, and under the control of, the defendant, the Public Utilities Commission of Utah.

25. That in the course of the taking of this testimony in said Case 248, said Commission took judicial notice of the schedules and tariffs of said Power Company on file with said Commission, and also took judicial notice of a certain memorandum filed by said Power Company with said Commission, which said memorandum was entitled "Data on Special Contracts filed with Public Utilities Commission of Utah, in compliance with Sup-

plement No. 1 to Tariff Circular No. 3, January 15, 1919"; and also took judicial notice of a certain other memorandum filed by said Power Company with said Commission, which memorandum was entitled, "Data on Special Contracts filed with Public Utilities Commission of Utah, in Compliance with Supplement No. 1, to Tariff Circular No. 3, January 15, 1920." By stipulation duly made and entered into, by and between the Commission and counsel for the Power Company, and counsel for various contract holders, including the plaintiff, the Copper Company, it was agreed, as appears of record in said cases before said Commission, that all of the testimony, evidence, documents and exhibits, in Case No. 248, were deemed to be testimony, evidence and exhibits in Case No. 230, insofar as the same was, or might be, material or relevant.

26. Thereafter and in August, 1920, said Cases 230 and 248, came on for argument before said Commission, and were argued orally, and printed briefs were filed, by some of the interested parties, including the plaintiff, the Copper Company.

27. Thereafter and under date of October 18, 1920, said defendant Commission made and entered its decision and order in said Case No. 230, a true copy whereof is hereto attached and marked Exhibit "M," and made part hereof.

28. And thereafter, and on October 21, 1920, and before the effective date of said order, said Exhibit "M," which did not become effective until noon of the 22nd day of October, 1920, the plaintiff, the Copper Com-

pany, filed with said Commission in said Case No. 230, its application for rehearing, a true copy whereof is hereto attached and marked Exhibit "N," and made part hereof.

29. And thereafter, and on November 9, 1920, said defendant, the Commission, made and entered an order in said Case No. 230, denying said petition of the plaintiff for rehearing, a true copy of said order is hereto attached and marked Exhibit "O" and hereby made a part hereof.

30. That said decision and order of said Commission bearing date of October 18, 1920, said Exhibit "M," and said order of said Commission dated November 9, 1920, said Exhibit "O," denying the petition of the plaintiff, the Copper Company, for a rehearing, is, and each and both of them are, unlawful, unreasonable, illegal, null and void, for the reasons and on the grounds, and each of them, set forth and enumerated in the said petition of the plaintiff, the Copper Company, for a rehearing before said Commission, said Exhibit "N"; and plaintiff hereby repeats, reiterates, and urges, each and every one of those reasons and grounds in support of this its application to review, set aside, cancel and annul, said decision and orders and each and both of them. That plaintiff avers errors were committed in the rendition and entry of said decision and orders, and each and both of them, and in the record and proceedings and rulings of the Commission had and made prior thereunto in said Case No. 230, to the grievous injury and prejudice of the plaintiff in each and every one of the respects

mentioned and set forth in the said petition of the plaintiff for a rehearing before said Commission, said Exhibit "M."

31. That this application is made within thirty (30) days after said application to said Commission for rehearing was denied; and no previous application of this character has been made by the plaintiff, the Copper Company, to this or any other Court; and the plaintiff, the Copper Company, has no other plain, speedy or adequate remedy at law, or in equity, or in course of law or equity, in the premises. And in and by Section 4834 of the Compiled Laws of Utah of 1917, the plaintiff is given the right to issuance out of this Honorable Court of a Writ of Certiorari or Review for the purpose of having the lawfulness of said decision and orders inquired into and determined.

WHEREFORE, plaintiff prays, and deponent on behalf of plaintiff prays:

1. That a Writ of Certiorari or Review may be issued out of and allowed by this Honorable Court directed to said Public Utilities Commission of the State of Utah, commanding said Commission to certify and return to this Court, within a time not exceeding thirty days from the issuance of such writ, its, said Commission's, record in said Cases 230 and 248, including a transcript of the testimony and evidence, together with all exhibits or copies thereof introduced, and of the pleadings and records and proceedings and all orders, proofs and papers of every nature whatever or concerning or relating to the same, in said causes numbered 230 and 248, to-

gether with all data, writings, memoranda, schedules and tariffs, of which said Commission took judicial notice in said causes, to the end that this Honorable Court may be certified of and review all the proceedings, decisions and orders, in said causes, and may further act thereon as of right and according to law ought to be done, and that said decision and orders, each and all of them, may be reviewed, set aside, cancelled, annulled, reversed and held for naught; and

2. That this Honorable Court review said proceedings, and orders, of said Commission, in Case No. 230, and that the same, said decisions and orders, be reversed, cancelled, set aside, annulled and held for naught; and

3. That the plaintiff have judgment for its costs in this action expended and for such other and further relief in the premises as to the Court may seem just, meet and proper.

(Signed) JOHN M. HAYES.

Subscribed and sworn to before me this 2nd day of December, 1920.

(Signed) S. B. LAMKIN,
(SEAL.) Notary Public in and for Salt Lake County,
State of Utah.

EXHIBIT A.

This agreement, made this 1st day of January, 1913, by and between the Utah Power & Light Company, a corporation of Maine, party of the first part (hereinafter called the "Power Company") and the Utah Cop-

per Company, a corporation of New Jersey, party of the second part (hereinafter called the "Copper Company"), witnesseth:

That whereas, the Power Company has acquired certain existing hydro-electric developments and transmission lines and is preparing to make additional hydro-electric developments and has and will have large amounts of electrical energy or power for sale; and

Whereas, the Copper Company is desirous of purchasing such electrical energy or power as hereinafter specifically set forth delivered as specified and is willing to contract for a large amount of said power;

Now, therefore, in consideration of the covenants and agreements hereinafter set forth, the parties hereto for themselves, their successors and assigns, agree as follows:

I.

The Power Company agrees to sell and continuously deliver to the Copper Company, and the Copper Company agrees to purchase and take from the Power Company, an initial amount of 12,000 electric H. P. at substations, to be provided by the Copper Company, located in Bingham, Arthur and Magna, Salt Lake County, Utah, the said initial amount of 12,000 H. P. to be divided among the individual substations in amounts to be determined by the Copper Company. The Copper Company shall notify the Power Company in writing on or before January 1st, 1914, what amounts of power are required in each of the above locations.

The said initial amount of 12,000 H. P. hereby contracted to be delivered by the Power Company, with the modifications as hereinafter provided, shall be known as the "*Total Contract Demand*" and the amount to be delivered to each individual substation as herein provided shall be known as the "*Bingham Contract Demand*," "*Arthur Contract Demand*" or "*Magna Contract Demand*."

The Copper Company shall have the right from time to time to vary the *Contract Demand* of any substation in the following manner, provided the *Total Contract*

Demand then existing shall not be increased or diminished, to-wit:

(a) Upon one day's written notice, if such variation does not necessitate a change in the capacity of devices and equipment for delivering the Contract Demand of any substation as so varied.

(b) Within six months (or at such earlier date as is practicable) after giving written notice to the Power Company, if such variation in any substation necessitates a change in the capacity of devices and equipment for delivering the Contract Demand of such substation as so varied.

II.

The Power Company shall provide capacity for and deliver continuously to the Copper Company at the aforesaid substations, additional electric power to the extent of 19,000 H. P. or a total of 31,000 H. P., such additional power to be delivered upon written notice from the Copper Company, and in blocks of 1,000 H. P. or multiples thereof. Said additional power shall be delivered and made available by the Power Company as follows:

(a) On the date specified in said written notice from the Copper Company, provided the delivery of such additional power does not necessitate an increase in the capacity or the equipment or in the facilities of the Power Company.

(b) On or before six months from date of said written notice in blocks of either 1,000 H. P. or 2,000 H. P., but it shall not be required to furnish more than two such maximum blocks (or an aggregate of 4,000 H. P.) in any one calendar year, and not less than five months shall intervene between successive demands for such maximum blocks.

(c) On or before fifteen months from date of said written notice in blocks of from 3,000 to 5,000 H. P.

(d) On or before two years from date of said written notice in blocks of from 5,000 to 10,000 H. P.

(e) On or before two and one-half years from date of said written notice in blocks of more than 10,000 H. P. Provided, however, that when a demand for additional

power under either of the above sub-sections, (c), (d), (e), has been made, no additional demand may be made pending the furnishing of such power as is then on order, except upon the written consent of the Power Company, but the Power Company agrees to provide such additional power as may be ordered by Copper Company under the provisions of (b), (c), (d), and (e) at such earlier dates as the same may be required by the Copper Company if it is reasonably practicable for the Power Company to furnish hydro-electric power at such earlier dates.

The Copper Company agrees to purchase and take at the aforesaid points of delivery so much of such additional 19,000 H. P. as the Copper Company or any subsidiary company or property owned, controlled or operated by the Copper Company, shall require or use within five (5) miles from any of the aforesaid points of delivery; excepting, however, such power as is or may be furnished under existing contracts or renewals thereof by the Garfield Smelting Company to the Garfield Water Company and the Garfield Improvement Company.

III.

In the event that the Copper Company or any subsidiary company or property owned, controlled or operated by said Copper Company within the Counties of Salt Lake and Tooele in the State of Utah, shall use electrical energy or power in excess of the power herebefore required to be taken by it, the Copper Company shall give written notice to the Power Company stating the point or points of delivery and amount of power required and the approximate date on which said power must be made available. The Power Company shall have the option to furnish any or all of said power at the price provided herein for said 31,000 H. P., provided the said Power Company shall within ninety days from said written notice, notify the Copper Company of its election to furnish such additional power; and if the Power Company elects to furnish such additional power, it shall provide the same at once if such additional power does not necessitate an increase in the capacity of the equipment

or in the facilities of the Power Company, and if it does necessitate such increase, then, from the date of such election, it will be obligated to furnish such additional power within the time schedule as above provided in Section II hereof.

It is further agreed that when such additional power is required at any point within five miles of the substation at either Magna, Arthur or Bingham, the point of delivery shall be at such substation.

IV.

The electric power delivered hereunder shall be used only in the mining, milling, transportation and smelting operations of the Copper Company and any other companies or properties owned, controlled or operated by it or in domestic electrical service, but then only to the extent needed for employees of the Copper Company or of any company owned, controlled or operated by the Copper Company.

V.

The electrical power to be delivered hereunder shall be what is known as three phase electrical energy of a frequency of approximately sixty cycles per second, and the voltage shall be approximately 42,000 volts, or such other voltage as may hereafter be agreed upon within the range of the substation apparatus installed and in use by the Copper Company. The Power Company will at its own expense furnish new or auxiliary substation apparatus made necessary by any change in voltage which may be so agreed upon.

VI.

The variation in voltage shall not exceed a total of five per cent above and five per cent below the normal voltage, and the frequency or number of cycles per second shall not vary more than a total of two and one-half per cent above and two and one-half per cent below the normal frequency; but it is understood that the above limitations in voltage and frequency shall not apply to unsustained variations which do not affect more than momentarily the regulation and efficiency of the Copper Company's apparatus.

It is further provided that for the electric power delivered and furnished under this contract, the combined effect of the variation of the voltage and frequency of the current as supplied by the Power Company will not cause sustained speed variations in standard induction motors at normal load greater than a total of one per cent above and one per cent below such normal induction motor speed,—this variation of speed to be determined by suitable apparatus operated with power from the lines of the Power Company at the points of delivery.

VII.

For electric power furnished and delivered by the Power Company to the Copper Company hereunder, payment shall be made to the Power Company by the Copper Company on or before the 15th day of each month for electric power delivered during the preceding calendar month at the rate of twenty-seven and fifty one-hundredths dollars (\$27.50) per horsepower per annum, equivalent to a rate of payment of four and two hundred and eight one-thousandths mills (\$0.004208) per kilowatt hour, measured at the respective points of delivery by integrating watt meters.

The total bill for power furnished during each month shall be the sum of the amounts due for service supplied at each substation calculated separately.

It is further provided, however, that the minimum monthly payment for each point of delivery, to be made by the Copper Company to the Power Company, in consideration of the latter's readiness to deliver such power, shall be at the rate of one and eighty-three and one-third one hundredths dollars (\$1.83 1-3) per month per horsepower of the *Contract Demand* in force at the time at such point of delivery.

The *Contract Demand* in force at any time at any point of delivery upon which minimum payments are to be based is the amount of power which it is herein agreed shall be furnished, (the aggregate of the initial amounts thereof, for all points of delivery being 12,000 H. P.) plus such additional power as may be furnished from time to time, at such point of delivery, upon the written order

of the Copper Company as herein provided, or, as the same may be automatically increased, at such point of delivery, as in this section provided.

The actual amount of power used at each point of delivery shall be recorded upon curve-drawing watt meters, and

(a) The maximum use of power for each month, at each point of delivery, as shown by said curve-drawing watt meters, shall be computed by taking the average height above the *Contract Demand* line of the highest watt-meter record of the continuous use of excess power in periods of ten minutes or greater duration aggregating one hour in any calendar day; provided, however, that if there be a base (or sustained load) line of one hour's duration higher than such average, then such one hour base line shall be taken. The maximum use of power so computed, for such point of delivery, shall constitute a "*Modified Contract Demand*" for said month at such point of delivery, with the result that the minimum payment for power at such point of delivery shall be one and eighty-three and one-third one hundredths dollars (\$1.83 1/3) per month per horsepower of the "*Modified Contract Demand*" so computed for such month.

(b) If a *Modified Contract Demand* as above defined be found to prevail during any eight months, whether the same be successive or not, of any twelve consecutive months period, then the average of such eight *Modified Contract Demands* shall at once become and be a new *Contract Demand* effective during the remainder of the term of this contract, unless it in turn be abrogated later by the establishment of another *Contract Demand* as herein provided, and the *Contract Demand* thus established shall be the *Contract Demand* operative during the last one of the eight months used in the establishment of such *Contract Demand*.

(c) If the actual amount of power delivered at any point of delivery as recorded upon such curve-drawing watt meters during any day of any month shall be in excess of the *Contract Demand* for such month (or in

excess of the *Modified Contract Demand* for such month, if there be any such *Modified Contract Demand*) and such excess delivery shall continue for one or more periods of ten minutes or more in such day, but such periods shall aggregate less than an hour during such day,—then the highest ten minute peak during such day shall constitute a *Special Contract Demand* for such day and the minimum payment for electric power during such day shall be at the rate of one and eighty-three and one-third one-hundredths dollars (\$1.83 1-3) per month per horsepower of such *Special Contract Demand* for such day. The minimum payment for any such day determined as above shall not affect any other day or days of such month, but the minimum payment for the other days of such month (except so far as any day may be affected by a *Special Contract Demand* for such day) shall be governed by the *Contract Demand* for the month or the *Modified Contract Demand* for such month if there be any such *Modified Contract Demand*.

Insofar as may be necessary in the starting of motors requiring excessive amounts of power for very short intervals, due to temporary and unavoidable irregularities in the power requirements of the Copper Company, the Copper Company shall be entitled to take for periods of time not exceeding ten minutes in duration, an additional amount of power not exceeding twenty per cent (20%) of the existing *Total Contract Demand*, excessive amounts of power caused by unavoidable short circuits to be disregarded. Such excess of power may be taken by the Copper Company at any one of the points of delivery or distributed between the several points of delivery, provided the simultaneous aggregate of such excess of power does not exceed twenty per cent (20%) of the existing *Total Contract Demand*. The Power Company is not obligated to furnish or to permit the Copper Company to take power in excess of the 12,000 H. P. *Contract Demand* initially established in Section I hereof, plus such additional power as may, from time to time, be ordered by the Copper Company as provided in Section II hereof, except as in this Section VII provided for

the use of excess power for periods of ten minutes or less, and the Copper Company shall have no right to increase its *Contract Demand* except upon written notice as provided in Section II hereof.

Nothing in this Article VII shall affect the right of the Copper Company to vary the *Contract Demand* of any substation in the manner provided in Article I. VIII.

The electrical apparatus in use by the Copper Company for the purpose of receiving electrical power under this contract shall be of good design in accordance with modern practice; and the Copper Company shall use every reasonable endeavor to limit its use of power to the existing *Contract Demand* and to so operate its electrical apparatus as not to unnecessarily disturb the normal operation of the Power Company's plants on account of power factor, starting current or otherwise. The Power Company shall employ in the construction and operation of its generating and transmitting system apparatus of good design in accordance with the best modern practice.

The Power Company in addition to proper legal and equitable remedies shall have the right to protect its circuits and electrical apparatus by the intervention of circuit breakers or other current limiting devices, against power demands in excess of those herein permitted, but if such current limiting devices be not installed the Copper Company shall not be held responsible for any damage that may result by reason of the failure to so install such devices.

IX.

The Power Company hereby agrees to use its best endeavors to deliver continuous, uniform, uninterrupted service, but such service may be interrupted to allow necessary repairs or alterations, and the Power Company is not required to account for such interruptions, nor for interruptions of service from causes beyond its control; provided, however, that all such interruptions, whether voluntary or involuntary on the part of the

Power Company, shall not in any one calendar year exceed either twelve (12) in number or twelve (12) hours in the aggregate.

Interruptions caused by defects or troubles in the electrical or other apparatus of the Copper Company, or upon its side of the point of the delivery of power, or by the use of power exceeding the amount the Copper Company is entitled hereunder to use, and also interruptions due to causes specified in paragraph X hereafter, shall not be included in the above-mentioned interruptions totalling twelve (12) in number and aggregating twelve (12) hours in duration.

Interruptions of electrical power service as hereunder specified shall be understood to include all interruptions of electrical service resulting in the necessary shutting down of any of the machinery and equipment used by the Copper Company in its operations, due to a failure (and for the time only of the failure) of the Power Company to deliver adequate electric power service in accordance with the terms hereof.

In case the interruptions of the service are fractional or cause the cessation of the operation of a portion only of the machinery and equipment of the Copper Company, such fractional interruptions are to be charged against total interruptions in number and point of duration, only to the extent of the proportion that the power rendered unserviceable by such partial or fractional interruptions bears to the then prevailing *Total Contract Demand*. The term "fractional interruptions" shall apply only to such interruptions as result in a reduction of the operating capacity of the Copper Company.

For all interruptions other than above, the Power Company is to pay to the Copper Company as liquidated damages, an amount equal to ten times the net amount (i. e., after deducting the steam plant rental) paid by the Copper Company to the Power Company for the preceding month for power equivalent to the amount of power which was being used by the Copper Company immediately preceding the interruptions but which was not

delivered to the Copper Company because of such interruption.

The Copper Company shall notify the Power Company in writing of each interruption of service under which the Copper Company may claim penalty. Said notice shall be given within seven days after the date of such interruption, stating the time and conditions of said interruption, and the amount of power which the Copper Company claims the Power Company failed to deliver, and the failure to give said notice shall operate as a waiver of such interruption.

X.

The obligation of the Copper Company to take power and of the Power Company to deliver power shall be suspended whenever such failure to receive or deliver shall result from strikes, labor troubles, lockouts, floods, fires, acts of God or the public enemy involving or affecting any of the properties or plants of the Power Company or the mines, mills or smelters which may be operated by the Copper Company or to which it may be shipping its products, or the transportation company or companies transporting said products, or for other causes beyond the control of the parties respectively.

XI.

The Power Company shall lease the steam plant of the Copper Company at Magna from and after January 1, 1914, (or from and after such earlier date upon which Power Company is able to supply Copper Company's full requirements) during the remaining term of this contract, at an annual rental of \$30,000.00 to be paid in equal monthly instalments, on or before the 15th day of each month for the preceding calendar month.

The Copper Company is to put said steam plant in good operating condition at the time of the transfer to the Power Company under said lease, and the Power Company shall thereafter maintain it in said condition and re-deliver said steam plant at the end of such term in said condition, excepting only reasonable wear and tear and damage due to acts of God or the public enemy or acts resulting from strikes or lockouts among the em-

ployees of the Copper Company. In connection with the lease of said steam plant and as an express condition thereof, it is agreed that to the extent that the Power Company is unable to supply power to the Copper Company to the amount of the then existing *Total Contract Demand* from its other generating plants, the Power Company shall deliver power to the Copper Company to the extent of the capacity of said steam plant in preference to the requirements of all other customers of the Power Company.

If at the time of such inability to furnish power from its other electrical generating plants, the Power Company fails to put promptly in operation the said steam plant, the Copper Company shall then have the privilege of so doing for the account and at the expense of the Power Company.

The Power Company hereby agrees to allow the Copper Company to use without charge not more than three boilers in said steam plant for the purpose of heating the mill of the Copper Company and furnishing steam to the pumping plant engine at Magna, provided the Copper Company at all times maintains said three boilers in said steam plant in good operating condition for power service ready for use. The Power Company shall at all times have the use of said boilers in said plant to the extent that they can be used without interfering with such pumping and the heating of the Magna mill. In consideration of the Copper Company being permitted to use said three boilers, it shall, without expense to the Power Company, keep a watchman at all times at said plant who shall be competent to keep any of the boilers in the said steam plant under steam and who shall be at all times at the service of the Power Company for the purpose of safeguarding the said steam plant and for keeping the boilers warm and for quickly starting and maintaining fires pending the arrival of the regular operators. The Copper Company is to hold the Power Company harmless from all damages arising or growing out of the Copper Company's operations of said three boilers.

The Copper Company shall keep said steam plant insured at the expense of, and for such sum as may be designated by, the Power Company. In case of fire or other damage upon which such insurance is collected, the amount received from such insurance is to be applied to restoring or rehabilitating the said steam plant or replacing it by a plant of equal capacity, efficiency and durability; provided, however, that at the time when said plant may be wholly or partially damaged or destroyed the Copper Company, with the consent of the Power Company, may elect that the plant be not restored or replaced, whereupon the Copper Company may retain the insurance money received and sell or otherwise dispose of the machinery and materials therein, and the rental to be thereafter paid by the Power Company shall be reduced in the proportion that the sum received from insurance and the sale of said remaining machinery and materials bears to the fair value of said plant at the time of destruction or sale, and if the amount received from such insurance, plus the amount received from the sale of said machinery and materials, aggregate less than the fair value of said plant at the time of destruction or sale, the Power Company shall have the right to pay the difference in cash to the Copper Company and shall thereafter be wholly relieved from any further obligations of any kind to the Copper Company in respect to said steam plant. If the Power Company does not consent to the disuse of said plant, the Power Company shall rebuild or replace it as above provided unless the damage or destruction has been due to one of the causes excepted as hereinbefore provided. The "fair value" of said plant for the purpose of this agreement shall be conclusively deemed and taken to be the sum of \$750,000.00.

XII.

Under this contract the Power Company shall be considered as delivering the power required by the Copper Company when there is maintained at the agreed points of delivery, three phase electric power at the frequency and voltage hereinbefore specified sufficient to

supply power to the extent of the *Total Contract Demand* prevailing at that time.

XIII.

The Power Company shall deliver the power contracted to be furnished hereunder to each of the three substations hereinbefore mentioned, at a point of delivery at the outside wall of the substation of the Copper Company, and the Copper Company shall furnish without charge to the Power Company all necessary easements and rights of way over its property for the poles, towers, wires and other appliances and accessories of the Power Company's transmission system, to connect with such points of delivery, and shall also at all times permit free ingress and egress to and from the said steam plant for men, material and supplies.

The Copper Company agrees that it will provide in each of its substations, the necessary space for the placing of such meter or meters and other auxiliary devices for the correct measuring of the electric power to be delivered or for any other purpose connected with the delivery of such electric power as herein provided. Said meters and auxiliary devices shall be connected into the system at the aforesaid points of delivery. Said meters shall at all times be kept accurate and shall be and remain at all times the property of the Power Company and the Power Company shall have access to the premises of said Copper Company at all reasonable times for the purpose of inspecting, repairing or maintaining said meters. The Copper Company agrees that it will read said meters as often as reasonably required by the Power Company and will transmit such readings to the Power Company. The measuring instruments shall be of a make and type to be agreed upon by representatives duly appointed by the parties hereto. All measuring instruments shall be sealed and shall be opened only in the presence of authorized representatives of said parties hereto, and any and all such instruments shall be tested in the presence of representatives of both parties at any time, upon the written request of either party to the other. If as a result of such test, any instrument shall be found to be inaccurate,

it shall be restored to a condition of accuracy satisfactory to the representatives of both parties, or a new instrument or instruments calibrated to the satisfaction of such representatives shall be substituted. If the inaccuracy of any instrument shall exceed one per cent (1%) fast or one per cent (1%) slow, then the readings of such instrument previously taken and the bill based thereon shall be corrected on the basis of such test, but not more than thirty days prior to the date of test. The Copper Company shall have the right to install duplicate instruments for checking. If either party shall at any time discover that any instrument, either original or duplicate, registers incorrectly or fails to register, then such party shall promptly notify the other party of the fact in writing. In the event of the stoppage of an original instrument in respect of which no duplicate has been installed, or of both original and duplicate instruments, the amounts of energy or power furnished during that month in which said stoppage occurs shall be made up ratably from other instruments or data which are known to be correct.

Power Company shall save and keep Copper Company harmless from any loss or liability under or by reason of any claim for injury to person or property occasioned by the electrical energy up to the point of delivery thereof by Power Company to Copper Company, as fixed herein, except as to such injuries as may result from negligence of Copper Company, or any of its servants, agents or employees; and Copper Company shall save and keep Power Company harmless from any and all loss or liability under or by reason of any claim from injuries to person or property occasioned by the electrical energy beyond the point of delivery thereof, except as to such injuries as may result from negligence of Power Company or any of its servants, agents or employees.

XIV.

In the event that the Copper Company finds it necessary to curtail, due to industrial conditions, its mining, milling or other operations, at any or all points of delivery, the Copper Company may reduce the *Contract Demand* then in effect at any or all points of delivery

by one or more blocks of power amounting to 1,000 H. P. each, by giving ninety (90) days' written notice to the Power Company and after the expiration of said ninety (90) days, the Copper Company is relieved of paying the minimum payment for power as provided in section VII hereof for blocks of power so withdrawn, but the Copper Company shall pay monthly to the Power Company for all blocks of power so withdrawn, an amount represented by a minimum bill of one dollar (\$1.00) per month per horsepower of said block or blocks of power so withdrawn, but will not be required to pay the above minimum amount for a longer period than twelve (12) months succeeding the expiration of such ninety (90) days' notice.

The Copper Company may at any time within the twelve (12) months during which the minimum bill of one dollar (\$1.00) per month per horsepower is being paid, give the Power Company written notice of thirty (30) days, (if Power Company shall require) to restore for the use of the Copper Company, electrical power in blocks of 1,000 H. P. to the extent of any portion or all of the power so withdrawn.

If any such power shall be withdrawn and shall not be restored within twelve (12) months, and if thereafter there shall be a resumption or extension of any portion of the business of the Copper Company requiring the use of additional electric power, said additional power shall be accepted and paid for by the Copper Company under this contract up to the limits herein provided; and the Power Company shall furnish the same if at that time it has electric power available from its hydro-electric plants, for delivery to the Copper Company under the terms hereof.

If the Power Company has not such electric power available from its then existing hydro-electric plants, but is able upon reasonable notice to develop the additional hydro-electric power required by the Copper Company in order to reinstate its *Contract Demand* at a cost of construction not to exceed in the aggregate one million dollars (\$1,000,000) in cash, and at a development cost to the Power Company not to exceed one hundred dollars (\$100.00) per continuous horsepower delivered to the

Copper Company as herein provided,—in such case, the Power Company shall thereupon develop such additional power; provided, that prior to a reduction in *Contract Demand* the Copper Company shall have exercised its right to take the full 31,000 H. P. hereinbefore mentioned; otherwise any increase of power shall be furnished as provided in Article II hereof, whether such increase be to reinstate power previously withdrawn or otherwise.

It is expressly agreed that the Power Company shall not be required to make any development which may be necessary to meet the Copper Company's demands for increased power or for reinstating its previous *Contract Demand*, during the last five years of the term of this agreement, unless the Copper Company at that time shall agree upon an extension of this agreement for an additional term of at least ten years for an amount of power at least equal to such additional power which the Power Company is required to furnish the Copper Company during such five year period.

In the event of any such withdrawal of power below a minimum of 12,000 H. P., it is hereby agreed that the rental charge for the steam plant at Magna, which is to be paid by the Power Company to the Copper Company as herein specified, shall from the date of such withdrawal be reduced in the proportion which the amount of power discontinued below said minimum bears to said 12,000 H. P. Conversely, the rental of said steam plant shall be proportionately reinstated as the amount of power below said minimum which has been withdrawn is restored as above indicated.

XV.

At the expiration of this contract, except in so far as the Copper Company may generate the power required by it, the Power Company shall be given the preference to continue to furnish such power to the Copper Company, providing the Power Company is at that time willing and able to furnish such power upon terms and at such prices and with facilities equal to those then offered to the Copper Company by any other electric power company.

XVI.

Delivery of power under this contract shall begin on January 1, 1913, to the extent that the Power Company can furnish power required by the Copper Company in excess of the capacity of its Magna Steam Plant, and deliveries of power up to the *Total Contract Demand* are to be made by the Power Company as soon as the development of its additional water powers will permit and not later than January 1, 1914. Until the lease of the Magna steam plant to the Power Company, as provided in Article XI, the Power Company shall not be held responsible for interruptions in accordance with the provisions of Article IX, but the Power Company shall use its best efforts to furnish a continuous, uniform and uninterrupted service. After the lease of said Magna steam plant shall begin all the terms and provisions of this contract shall be in full force and effect.

XVII.

This agreement shall continue for a period of twenty-five (25) years from the first day of January, 1913.

In witness whereof, the parties have caused these presents to be signed by the hands of their respective presidents, their corporate seals affixed and attested by their respective secretaries the day and year first above written.

UTAH POWER & LIGHT COMPANY,

By G. M. DAHL,
President.

Attest:

E. P. SUMMERSON,
Secretary.

UTAH COPPER COMPANY,

By C. M. MACNEILL,
President.

Attest:

K. R. BABBITT,
Assistant Secretary.

EXHIBIT "B."

March 3rd, 1913.

Utah Power & Light Company, 71 Broadway, New York City, N. Y.

GENTLEMEN: Referring to conference since the execution of the contract bearing date of January 1st, 1913, between our Companies, said contract is hereby modified in the following particulars:

1st. If your Company is unable by the exercise of due diligence to complete your hydro-electric installation so as to enable you to furnish us the "total contract demand" on or before January 1, 1914, that no penalty will be exacted by us, provided such "total contract demand" be furnished not later than July 1st, 1914.

2nd. We are to specify the distribution of power as between Arthur, Magna and Bingham at the earliest practicable date and in time to enable you to procure the necessary power delivery equipment at these points.

3rd. Otherwise than as herein specifically modified the contract to remain unchanged.

Will you kindly advise me if the above correctly states our understanding?

Yours very truly,

UTAH COPPER COMPANY,

By C. M. MACNEILL,

President.

Attest:

K. R. BABBITT,

Assistant Secretary.

The foregoing correctly states the agreement between us.

UTAH POWER & LIGHT COMPANY,

By G. M. DAHL,

President.

Attest:

E. P. SUMMERSON,

Secretary.

EXHIBIT "C."

December 30th, 1913.

*Utah Power & Light Company, 71 Broadway, New York,
N. Y.*

GENTLEMEN: Referring to our recent conference in connection with the contract between your Company and the undersigned bearing date January 1, 1913, and the modification thereof under date of March 3, 1913, extending the time in which you are under obligation to furnish the "Total Contract Demand," as defined in said contract, to July 1st, 1914, considered in the light of Article XI of the said contract of January 1st, 1913, relating to the leasing of our Power Plant, we beg to suggest as a fair adjustment of the questions involved that the execution of the formal lease of the steam plant be deferred until July 1, 1914, or as of such earlier date as your company shall be able to supply to the Copper Company its full contract demand and that, in the meantime your Company pay as rental at the rate of such proportionate part of \$30,000 per annum as the capacity of said plant which is displaced by power furnished by you averaged over monthly periods, bears to the total capacity of said plant, to-wit: 12,000 horsepower.

For example, if said Power Plant produced 3,000 horsepower, and 9,000 horsepower of said capacity is supplied by your hydro-electric or other plants, the rental to be paid prior to the time above referred to would be at the rate of \$22,500.00 per annum.

We deem the above adjustment equitable and in accordance with the spirit of the contract, and upon your acceptance thereof we will consider the modification effective from January 1st, 1913.

Yours very truly,

UTAH COPPER COMPANY,

By C. M. MACNEILL,

President.

Attest:

ARTHUR J. RONAGHAN,

Assistant Secretary.

(CORPORATE SEAL.)

The proposition as above set forth is hereby accepted.

UTAH POWER & LIGHT COMPANY,

By G. M. DAHL,

Vice-President.

Attest:

E. P. SUMMERSON,

Assistant Secretary.

(CORPORATE SEAL.)

EXHIBIT "D."

PUBLIC UTILITIES COMMISSION OF UTAH.

Tariff Circular No. 3.

Governing the Filing of Tariffs Pertaining to Gas, Water, Telephone, and Electric Utilities.

All tariffs should be printed or reproduced by stereotype, plantograph, or similar process, on heavy white paper of size 8½ by 11 inches, and shall contain the following information:

The title page shall bear in the upper right corner the letters P. U. C. U. and shall be numbered consecutively, beginning with Number 1, thus: P. U. C. U. No. 1. When a tariff cancels a previous issue, the P. U. C. U. of cancelled tariff shall be shown in smaller letters directly beneath the current number, thus:

P. U. C. U. No. 3,

CANCELS P. U. C. U. NO. 2.

The notation "No supplement to this tariff may be issued except for the purpose of cancelling the tariff" shall be shown in the upper left corner. The name of the corporation or municipality owning or operating the utility, and the location of principal or general office, together with the title "SCHEDULE OF RATES FOR," followed by the kind of service, shall be shown in the center of the page. The territory in which rates shall be shown, preceded by the title: APPLYING TO THE FOLLOWING TERRITORY.

On the lower part of the page shall be shown on the left:

ISSUED	
(Month) (Day) (Year)	and on the right
EFFECTIVE	
(Month) (Day) (Year)	

Directly beneath the effective date shall be shown the name, title, and address of issuing officer.

All following sheets shall be numbered consecutively and shall show the name of corporation or municipality issuing the tariff, P. U. C. U. No., date issued, date effective, name, title and address of officer issuing the tariff, and if cancelling former sheet, must show number of sheet cancelled.

Whenever any change is made in any rate, resulting in an advance in such rate, such change shall be denoted by the symbol "A" shown in connection with rate changed, and on the same page shall be shown a footnote giving reference to such symbol and explaining its use, thus: "A" denotes advance. Should such change result in a reduction, the symbol "R" shall be shown, footnote explaining its use, thus: "R" denotes reduction. Changes that do not effect either decrease or increase in charges but change only the wording or phraseology, of the rule or item shall be designated by the symbol "C," which shall be explained by a footnote, thus: "C" denotes change other than increase or decrease in rates.

Sheet No. 1 shall show "Table of Contents," which shall be continued on Sheet No. 2, if insufficient space on Sheet No. 1. Sheet No. 1 may, in addition to "Table of Contents," if space permits, also show "Description of Territory."

Each consecutive sheet shall show in the following order: "Classification of Service," "Special Rates and Contracts," "Rules and Regulations," "Definitions, Explanations and Remarks."

Under head of "Classification of Service" shall be shown, when corporation is an electric utility, whether lighting, heating, commercial power, etc., and a separate sheet should be used for each class of service. Other classes of utilities shall show similar information as to the different classes of service. Each sheet bearing classification of service shall also show all rates and charges in connection therewith and reference by number to any special rules and regulations governing such service.

All public utilities owning or operating any electric utility, gas utility, water utility or telephone utility, shall before the 1st day of June, 1918, print and file with the Public Utilities Commission of Utah schedules of all their rates, rules and regulations affecting the service of such utility, in the form and manner herein described; provided, that such utilities as have prior to the date hereof filed with the Commission printed tariffs containing rates, rules and regulations shall not be required to reissue such tariffs, except upon special orders from the Commission.

Dated at Salt Lake City, Utah, this eighth day of April, 1918.

BY THE COMMISSION.

(SEAL.)

(Signed) T. E. BANNING,
Secretary.

EXHIBIT "E."

PUBLIC UTILITIES COMMISSION OF UTAH.

Supplement No. 1 to Tariff Circular No. 3.

To All Gas, Water, Telephone and Electric Utilities:

To avoid misunderstanding and unnecessary delays in complying with the provisions of Tariff Circular No. 3, your attention is called to Section 2 (B), Article 3 of the Public Utilities Act, which reads as follows:

"Under such rules and regulations as the Commission may prescribe, every public utility other than a common carrier shall file with the Commission within such time and in such form as the Commission may designate, and shall print and keep open to public inspection schedules showing all rates, tolls, rentals, charges and classifications collected or enforced, or to be collected or enforced, together with all rules, regulations, contracts, privileges, and facilities which in any manner affect or relates to rates, tolls, rentals, charges, classifications, or service. Nothing in this section contained shall prevent the Commission from approving or fixing rates, tolls, rentals, or charges, from time to time, in excess of or less than those shown by said schedules."

Particular attention is called to the provision of this section which requires "all rates, tolls, rentals, charges and classifications," together with "all rules, regulations, contracts, privileges and facilities which in any manner affect or relate to rates, tolls, rentals, charges, classifications or service" must be filed with the Commission.

Attention is also called to Section 6, Article 3 of the Public Utilities Act, which reads as follows:

"Except as in this section otherwise provided, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such products or commodity or service as specified in its schedules on file and in effect at the time, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals and charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons; provided, that the Commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility."

The above section provides that no Public Utility shall "charge, collect, demand or receive a greater or less or different compensation * * *, than the rates, tolls, rentals and charges * * * specified in its schedules on file and in effect * * * nor extend to any corporation or person any form of contract or agreement or any rule or regulation * * * except such as are regularly and uniformly extended to all corporations or persons."

Delay has been experienced in securing full compliance with the provisions of Tariff Circular No. 3 and all gas, water, telephone and electric corporations, whether

municipal or otherwise, are hereby required to notify the Commission in writing within ten days from the date hereof of any rules, regulations, contracts, privileges, facilities or agreements not included in its published schedules which are at present in effect, and on file with the Public Utilities Commission of Utah, and to file certified copies of all such documents, if such exist, within thirty days from the date hereof.

Provided, that if copies of such contracts have been filed with the Commission prior to the date of this order, reference to the name of the corporation, or person with whom such contract has been made and date such copy was filed, or forwarded for filing shall be furnished the Commission within the ten days from the date hereof.

All gas, water, telephone, or electric utilities which have not published schedules in accordance with Tariff Circular No. 3 shall within ten days from the date hereof notify the Public Utilities Commission of Utah to that effect and shall within thirty days from the date hereof comply with all the provisions of Tariff Circular No. 3.

Dated at Salt Lake City, Utah, this 23rd day of October, 1918.

BY THE COMMISSION.

(SEAL.)

T. E. BANNING,
Secretary.

EXHIBIT "F."

P. U. C. U.

ORIGINAL SHEET NO. 43

TARIFF NO. 1.

ISSUED MARCH 1, 1917.

SCHEDULE NO. 43.

EFFECTIVE MARCH 1, 1917.

UTAH POWER & LIGHT COMPANY

State of Utah.

GENERAL POWER METER RATE.

Effective in all Territory Served by the Company.

CHARGES.

(a) Demand: \$1.00 per month per horsepower of monthly maximum demand.

(b) Energy: $1\frac{1}{4}c$ per K. W. H. First 10,000 K. W. H. of monthly consumption. $.8c$ per K. W. H. Next

40,000 K. W. H. of monthly consumption. .7c per K. W. H. For all monthly consumption in excess of 50,000 K. W. H.

(1) *Application of Schedule:* This schedule is for alternating current 3-phase service, supplied at voltage in excess of 12,000 volts for general power purposes.

(2) *Discount:* A discount of ten per cent (10%) on monthly billing will be given from this schedule in consideration of the Consumer signing a contract for ten (10) years or more for those months in which the Consumer establishes a maximum demand of 250 H. P. or more, provided such bill is paid within the discount period.

(3) *Breakdown Service:* This schedule is not for breakdown service.

(4) *Contract Period:* No contract under this schedule shall be for a term of less than one (1) year.

(5) *Rules and Regulations:* Service under this schedule shall be in accordance with the terms of the contract between the Consumer and the Company, and shall be subject to all Rules and Regulations of the Company, present or future, on file with the Public Commission of the State of Utah, and also on file and for distribution at the Company's office.

Issued by

S. R. INCH,
Operating Manager.

Approved by

C. E. GROESBECK,
Vice-Pres. & Gen'l Mgr.

EXHIBIT "G."

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH.

In the Matter of the Investigation of Special Contracts of the Utah Power & Light Company, for Electric Service.

Case No. 230.

ORDER.

Examination having been made by the Commission

of certain special contracts entered into by and between the Utah Power & Light Company and certain of its customers, under which the said Utah Power & Light Company has been and now is giving service, furnishing energy for light and power purposes:

And it appearing from such examination that the rates, charges, facilities, privileges, rules and regulations provided in such special contracts, are not in accordance with the rates, charges, facilities, privileges, rules and regulations set out in the published schedules of said Utah Power & Light Company lawfully on file with this Commission, or with the provisions of contracts based upon such lawfully published schedules, entered into by and between the said Utah Power & Light Company and others of its customers, under which service is being concurrently given:

And it further appearing that said special contracts are discriminatory and preferential, in that the rates, charges, facilities and privileges accorded customers thereunder are not such as are regularly and uniformly extended to any and all persons or corporations, who are now, or who may desire to become, customers of the said Utah Power & Light Company, and therefore, are in conflict with Section 4789, of the Compiled Laws of Utah, 1917, which reads as follows:

“No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any corporation or person, or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service. The commission shall have the power to determine any question of fact arising under this section.”

And it further appearing that the following persons and corporations are parties to the said contracts:

•

Salt Lake & Utah Railroad Co.	Beaver Dam Milling Co.
Chief Cons., Eagle & Blue Bell	Frank M. Wilson (Wilson Hotel
Mg. Co.	Co.).
Cameron Coal Company.	Cardiff Mining Company.
U. S. Fuel Company.	Empire Theatre.
Standard Coal Company.	Ogden Trust Company.
Murray City.	Anglely & Carmichael Irrigation
Salt Lake Terminal.	Co.
Portland Cement Company	of Three Kings Silver Mining Co.
Utah.	Warren Irrigation Company.
U. S. Smelting Company.	John W. Gates.
Daly West Mining Company.	Utah Lake Irrigation Co.
Independent Coal & Coke Co.	James H. Gardner.
Carbon Fuel Company.	Herald-Republican.
Spring Canyon Coal Co.	Clayton Investment Co.
Tintic Milling Co.	Samuel H. Auerbach.
Wattis Coal Company.	Bransford Apartments.
Salt Lake & Ogden Ry. Co.	Oregon Short Line R. R. Co.
Utah Light & Traction Co.	Utah Iron & Steel Co.
Utah Hotel.	Denver & Rio Grande R. R. Co.
Judge Mining & Smelting Co.	Charles Peterson.
Utah-Idaho Central Ry. Co.	Vienna Bakery.
Town of Mantua.	Silver King Coalition Co.
Board of Canal Presidents (Asso-	Utah Apex Mining Co.
ciated Canals Company).	Hercules Powder Co.
Deseret News.	Bingham Mines Co.
Dooly Building Company.	State Mill & Elevator Co.
Walker Realty Company.	Ogden Portland Cement Co.
Newhouse Realty Company.	Layton Mill & Elevator Co.
American Smelting & Refining	New Era Irrigation Co.
Co.	Utah Condensed Milk Co.
Salt Lake Pressed Brick Company.	Rex Theatre.
Salt Lake City Union Depot.	Salt Lake Iron & Steel Co.
Jordan Pump & Pipe Line Co.	Ogden Packing & Provision Co.
R. M. Holt.	David Eccles Estate.
Silver King Cons. Mining Co.	American Foundry & Machine Co.
Utah Consolidated Mining Co.	Pelican Point Irrigation Contract.
Utah Metals & Tunnel Co.	Rosenberg Investment Co.
Ohio Copper Company.	American Can Co.
Utah Copper Company.	Cudahy Packing Company.
Union Portland Cement Co.	
Salt Lake & Ogden Railway Co.	
(Main).	

Now, therefore, upon motion of the Commission.

It is ordered, that for the purpose of making a full and complete investigation and inquiry into the provisions of such contracts and each of them, and into all matters pertaining thereunto, the said Utah Power & Light Company and the persons and corporations above named, be notified and cited to appear before the Commission at its office, Room 303 State Capitol, Salt Lake City,

Utah, on the 11th day of November, 1919, at ten o'clock a. m., then and there to justify the continuing in effect of such special contracts, and the rates, charges, facilities and privileges granted thereunder, and to show the reasonableness and equity of such rates, charges, facilities and privileges, and further to show that they are not in contravention of the provisions of said Section 4789 of the Compiled Laws of Utah, 1917.

BY THE COMMISSION.

Dated at Salt Lake City, Utah, this 27th day of September, 1919.

(Signed) JOSHUA GREENWOOD,
HENRY H. BLOOD,
WARREN STOUTNOUR,
Commissioners.

Attest:

(Signed) T. E. BANNING,
Secretary.

(SEAL.)

Attest:

A true copy.

(Signed) T. E. BANNING,
Secretary.

EXHIBIT "H."

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH.

In the Matter of the Investigation of Special Contracts
of the UTAH POWER & LIGHT COMPANY, for
electric service.

Case No. 230.

Comes now the UTAH COPPER COMPANY, specially appearing for the sole and only purpose of objecting to and challenging the jurisdiction or power of the said Public Utilities Commission of Utah over this company in the premises and moving to quash, vacate, set aside and annul the order to show cause issued by said Commission herein under date of September 27, 1919, as to this company, and as to the contract made and entered

into by and between this company and the said Utah Power and Light Company under date of January 1, 1913, as modified under date of March 3, 1913, and December 30, 1913, and for no other purposes; and moves the Commission to make and enter of record herein an order quashing, vacating, setting aside and annulling as to this company, and as to said contract said order to show cause for the following reasons and upon the following grounds and each of them, to-wit:

1. Because there is no authority, jurisdiction or power conferred upon, vested in or given said Commission to institute, conduct or prosecute this particular proceeding with respect to this company, in the manner or by the means herein attempted.

2. Because there is no authority, jurisdiction or power conferred upon, vested in or given said Commission to institute, conduct or prosecute this particular proceeding with respect to this company or with respect to said contract, in the manner or by the means herein attempted.

3. Because there is no authority, jurisdiction or power conferred upon, vested in or given said Commission to institute, conduct or prosecute this particular proceeding with respect to this company or with respect to said contract, in the manner or by the means herein attempted, this proceeding not being founded upon a complaint as required by the Act of the Legislature of the State of Utah, approved March 8, 1917, (C. 47, Laws of Utah, 1917,) entitled "An Act creating a Public Utilities Commission," etc.

4. Because as respects this company said Commission acted without any jurisdiction and acted in excess of its jurisdiction in making, entering or issuing said order to show cause.

5. Because, as respects said contract, said Commission acted without any jurisdiction and acted in excess of its jurisdiction in making, entering or issuing said order to show cause.

6. Because said order to show cause does not state, set forth or contain any facts sufficient to confer upon,

vest in, draw to or disclose in said Commission any right, power, authority or jurisdiction to institute, prosecute, entertain, hear or determine any of the matters and things referred to in said order to show cause as respects this company, or to make any order or finding with respect to this company or with respect to said contract. And on the contrary, said order to show cause shows upon its face that said Commission had and has no such right, power, authority or jurisdiction in the premises as respects this company or as respects said contract.

7. Because said Commission had and has no jurisdiction over the subject matter of said order to show cause or said investigation as respects this company or as respects said contract.

8. Because said Commission had and has no jurisdiction over the person of this company in the face of this, its protest, entered herein *in limine*.

9. Because said order to show cause is illegal, null and void and not warranted by any provision of law.

10. Because said order to show cause is illegal, null and void, and is unconstitutional in that it deprives this company of its property without due process of law and denies to this company the equal protection of the law in violation and contravention of the act creating said Public Utilities Commission as aforesaid, and in violation and contravention of the provisions of Section 1, Article XIV of the Amendments to the Constitution of the United States of America, and Section 7, of Article I of the Constitution of the State of Utah.

11. Because said Commission has no right, power, authority or jurisdiction to institute this proceeding looking to any abrogation, interference with, or impairment of said contract between this company and said Utah Power & Light Company.

12. Because said order to show cause issued herein as aforesaid does not state, set forth or contain any facts sufficient to confer upon, vest in or draw to said Commission any right, power, authority or jurisdiction to inquire into or make any investigation with respect to, or make any order or conduct any hearing or take any evi-

dence with respect to this company or said contract between this company and the Utah Power & Light Company.

13. Because this Commission had and has no right, power, authority or jurisdiction to pass upon or adjudicate any rights under, respecting, existing or growing out of contracts made or entered into prior to the passage of said Act (said c. 47 of the Laws of the State of Utah of 1917).

14. Because said Commission had and has no right, power, authority or jurisdiction to abrogate, cancel, modify, impair or otherwise interfere with contracts entered into prior to the creation of said Commission and prior to the passage of said Act (said c. 47 of the Laws of Utah of 1917) which at such time were lawful and founded upon an adequate consideration.

15. Because the Commission has only such powers and duties as have been conferred upon it by said Act creating it as aforesaid; and the Legislature of the State of Utah has not granted to, conferred upon, or vested in said Commission any right, power or authority to abrogate, cancel, modify, impair or interfere with said contract or any of the provisions thereof; but, on the contrary, by subdivision C of Section 5 of Article III of said Act, it is provided, in substance and effect, that nothing in said Public Utilities Act contained shall be construed to prevent the carrying out of contracts for free or reduced rates, public utility service, made before the passage of said Act, which are founded upon an adequate consideration and lawful when made, all of which conditions are found upon the face of said contract between this company and said Utah Power & Light Company.

16. Because, should the Commission fail to give full force and effect to the provisions of subdivision C of Section 5 of Article III of the said Public Utilities Act hereinbefore referred to, by holding or ruling that it has any jurisdiction, right, power or authority to change, alter, abrogate, amend, impair or otherwise interfere with said contract, or the rates, charges, facilities or privileges thereunder and therein provided for, such holding or rul-

ing would deprive this company of its property without due process of law and would deprive this company of the equal protection of the law and would impair the obligation of said contract, in violation and contravention of the provisions of the Constitution of the United States of America and the Constitution of the State of Utah.

17. Because said contract shows upon the face thereof that it, together with the rates, charges, privileges and facilities therein embraced, involve a commodity, service or transaction of and in interstate commerce and that any attempted abrogation, cancellation or impairment thereof or interference therewith by this Commission would impose a burden upon and interfere with interstate commerce in violation and contravention of the provisions of Section 8 of Article I of the Constitution of the United States.

18. Because said contract was made and entered into prior to the enactment of said Public Utilities Act aforesaid and was founded upon an adequate consideration and was lawful when made.

19. Because said order to show cause contains nothing but conclusions of law, without any statement or finding of fact whatsoever.

20. Because the conclusions of law set forth in said order to show cause are erroneous upon their face.

21. Because said Commission has no right, power, authority or jurisdiction to impose any burden of justifying said contract or the rates therein provided for upon this company.

22. Because the Legislature of the State of Utah has not directly abrogated, impaired or interfered with said contract, and has not delegated to the Commission any power, right, authority or jurisdiction to abrogate or impair the same, or interfere therewith.

23. Because the Utah Copper Company is not under the jurisdiction of the Commission and is not a public utility defined, mentioned or referred to in said Act or thereby placed under the jurisdiction of the Commission; and it is beyond the right, power, authority or jurisdiction of the Commission to issue any order addressed or directed to the said Copper Company requiring it to do

or refrain from doing anything with respect to said contract.

24. Because said contract is excepted from, removed from, and withdrawn from, the jurisdiction of the Commission by that portion of Section 5 of Article III of said Act creating said Public Utilities Commission, wherein and whereby it is provided that nothing in said Act shall be construed so as to prevent the carrying out of contracts for free or reduced rates, public utility service, theretofore made and founded upon an adequate consideration and lawful when made.

25. Because the Commission had and has before it nothing to show and nothing whereon to base or to justify any finding, statement or conclusion that the rate mentioned in said contract or said contract itself, was unreasonable, confiscatory, inadequate, unremunerative, unjust, discriminatory, preferential or unlawful.

26. Because the abrogation of said contract is not one of the duties imposed on said Utah Power & Light Company by law.

27. Because the schedules in said order referred to were and are inapplicable to said contract and have not and never have had any force or efficacy with respect thereto.

28. Because it was and is beyond the right, power, authority or jurisdiction of said Commission to make any ex parte finding or ruling that said contract was or is invalid or unlawful without having afforded this company a hearing insured to it in accordance with the due process of law guaranteed it by the Constitution of the United States of America and the Constitution of the State of Utah.

29. Because said schedule and tariffs in said order to show cause referred to have not and could not have any operative effect to abrogate said contract or to increase any of the rates therein named, as neither said Utah Power & Light Company nor said Commission has ever followed the procedure prescribed by said Act creating said Commission relative to increasing rates, charges or tolls in such contract provided.

30. Because said contract contains special agreements and provisions on its face co-related with and having a distinct relation to the rates therein named, and contains leasing provisions which are beyond the right, power, authority or jurisdiction of the Commission to consider, investigate, abrogate, impair or interfere with, and said contract is a single, specific and indivisible contract.

31. Because said contract contains provisions relative to the leasing by this company to said Utah Power & Light Company of the steam plant of this company, as therein in detail set forth, and any order or ruling of the Commission abrogating, cancelling, impairing or interfering therewith, or attempting so to do would impair the obligation of such contract in such respect in violation of the provisions of Section 10 of Article I of the Constitution of the United States and of Section 18 of Article I of the Constitution of the State of Utah, and would deprive this company of its property without due process of law and deny it the equal protection of the laws in violation and contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States of America, and in violation and contravention of Section 7 of Article I of the Constitution of the State of Utah.

32. Because since the making and issuance of said order to show cause herein, said Utah Light & Power Company has made and filed with the Commission a petition for a revision and increase in all rates, charges and tolls of said Power Company, including said schedule and tariffs in said order to show cause referred to; and said petition is now pending before the Commission and supersedes or should supersede the investigation attempted to be instituted by said order to show cause herein; and to require this company, under these circumstances, to respond to said order to show cause, would be unjust, unreasonable, uneconomic, capricious, arbitrary, contrary to natural justice, and incompatible with the due process of law and equal protection of the law clauses of the Constitution of the United States of Amer-

ica and the State of Utah, the protection of which this company hereby claims.

Dated this 8th day of December, 1919.

DICKSON, ELLIS, LUCAS & ADAMSON,
Attorneys for the Utah Copper Company.

EXHIBIT "I."

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH.

In the Matter of the Investigation of Special Contracts of
the Utah Power & Light Company, for Electric
Service.

Case No. 230.

NOTICE OF HEARING.

*To Dickson, Ellis & Lucas, Attorneys, Utah Copper Com-
pany, City.*

You are hereby notified that the Public Utilities Commission of the State of Utah, has set the above entitled case for hearing before the Commission, beginning on Tuesday, the 27th day of January, 1920, at ten o'clock a. m., Room 303, State Capitol, Salt Lake City, Utah, for the purpose of making investigation and inquiry into the provisions of the contracts referred to in the above numbered case, at which time and place you will be given an opportunity to be heard and present such showing as may be deemed pertinent.

By order of the Commission.

Dated at Salt Lake City, Utah, this 14th day of January, 1920.

T. E. BANNING,

(SEAL.)

Secretary.

Please acknowledge receipt of this notice.

EXHIBIT "J."

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH.

In the Matter of the Investigation of Special Contracts
of the Utah Power & Light Company, for Electric
Service.

Case No. 230.

NOTICE OF HEARING.

To Utah Copper Company & Dickson, Ellis & Lucas, Attorneys, Utah Power & Light Company.

You are hereby notified that the Public Utilities Commission of Utah has set the above entitled case for hearing before the Commission, on Monday, the 8th day of March, 1920, at ten o'clock a. m., Room 303, State Capitol Building, Salt Lake City, Utah, at which time and place you will be given an opportunity to be heard.

By order of the Commission.

Dated at Salt Lake City, Utah, this 14th day of February, 1920.

T. E. BANNING,

(SEAL.)

Secretary.

EXHIBIT "K."

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH.

Case No. 230.

In the Matter of the Investigation of Special Contracts
of the Utah Power & Light Company, for Electric
Service.

ORDER.

To Utah Copper Company, (Dickson, Ellis & Lucas, Attys.) Utah Power & Light Company.

Upon motion of the Commission:

It is ordered, that the hearing in the above entitled

matter which was set for March 8, 1920, before the Commission, be, and it is hereby continued without date.

By the Commission.

Dated at Salt Lake City, Utah, this 16th day of February, 1920.

T. E. BANNING,
Secretary.

(SEAL.)

EXHIBIT "L."
BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH.

Case No. 230.

In the Matter of the Investigation of Special Contracts of the Utah Power & Light Company, for Electric Service.

RETURN AND ANSWER OF UTAH COPPER COMPANY TO THE
ORDER TO SHOW CAUSE HEREIN, DATED
SEPTEMBER 27, 1919.

Comes now the Utah Copper Company (and not waiving, but expressly reserving, its objection to the jurisdiction or power of the said Public Utilities Commission of Utah over this Company in the premises, and reserving its exception to the action of said Commission in overruling the Utah Copper Company's motion to quash heretofore filed in the above entitled case), and makes this its return and answer to the order to show cause issued herein by the above named Commission under date of September 27, 1919, and says, shows and alleges:

1. That the Utah Copper Company hereby repeats, reasserts, realleges and reurges each and every one of the objections numbered 1 to 31, both inclusive, of its motion to quash, dated September 8, 1919, heretofore filed herein, as fully and with the same force and effect as if said objections and each and all of them were herein recited verbatim and at length.

2. That the contract bearing date January 1, 1913, between the Utah Copper Company and the Utah Power & Light Company was made prior to the enactment, passage or approval of the Act of the Legislature of the State of Utah, approved March 8, 1917, (ch. 47, Laws of Utah 1917,) entitled "An Act Creating a Public Utilities Commission," etc.

3. That the contract bearing date January 1, 1913, between the Utah Copper Company and the Utah Power & Light Company was lawful when made.

4. That the contract bearing date January 1, 1913, between the Utah Copper Company and the Utah Power & Light Company was founded upon an adequate consideration when made.

5. That said Commission has no right, power, authority, or jurisdiction to abrogate, cancel, modify, impair, or otherwise interfere with said contract bearing date January 1, 1913, between the Utah Copper Company and the Utah Power & Light Company, which said contract was entered into prior to the creation of said Commission and prior to the passage of said act, said ch. 47, Laws of Utah 1917, and which said contract was lawful and founded upon an adequate consideration when made.

6. That under the facts and circumstances of this case, as already shown in the evidence herein, and to be further developed by the evidence herein, any action or order of this Commission abrogating, cancelling, modifying, impairing, or otherwise interfering with said contract bearing date January 1, 1913, between the Utah Copper Company and the Utah Power & Light Company, or attempting or tending so to do, would be unconstitutional, illegal, null and void, in that the same would impair the obligation of said contract and deprive the said Utah Copper Company of its property without due process of law and deny to said Utah Copper Company the equal protection of the laws, in violation and contravention of the provisions of the Constitution of the United States of America and the Constitution of the State of Utah, and particularly the provisions of Sec. 10, of Article I, and

the provisions of the Fourteenth Amendment, of and to the Constitution of the United States of America, and the provisions of Section 7, and Sec. 18, of Article I, of the Constitution of the State of Utah.

7. Because the electric power furnished the Utah Copper Company by the Utah Power & Light Company under said contract bearing date January 1, 1913, between said companies, is and always has been generated and produced in the State of Idaho and transmitted into the State of Utah to the plants of the Utah Copper Company located in Utah, and the rates, charges, privileges and facilities embraced in said contract involve and are for a commodity, service or transaction of and in interstate commerce; and that any attempted abrogation, cancellation or impairment thereof or interference therewith, or of or with any part or portion thereof, by this Commission, would impose a burden upon and interfere with interstate commerce in violation and contravention of the provisions of Sec. 8 of Article I of the Constitution of the United States of America.

8. That the consideration of said contract bearing date January 1, 1913, between the Utah Copper Company and the Utah Power & Light Company, is and at all times since the making thereof, has been adequate, equitable, fair and just.

9. That the said contract bearing date January 1, 1913, between the Utah Copper Company and the Utah Power & Light Company, is not and never has been unduly or unjustly discriminatory or preferential.

10. That on April 8, 1918, over a year after the Act had been in effect, the Commission issued its "Tariff Circular No. 3," requiring the Utilities to file their tariff schedules by June 8, 1918. That circular carried the express mandate that: "Whenever any change is made in any rate, resulting in an advance of such rate, such change shall be denoted by the symbol 'A' shown in connection with the rate changed, and on the same page shall be shown a footnote giving reference to such symbol and explaining its use, thus: 'A' denotes advance." And that at that time the Power Company had not filed any

tariff schedule whatsoever. Over sixteen months passed, and still no schedules were filed. And that on October 23, 1918, the Commission issued its order known as "Supplement No. 1 to Tariff Circular No. 3." That order called attention to the statute (sub. 2, Sec. 4784 C. L. 1917) as requiring the utility corporation to file its "schedules" and also its "contracts" with the Commission. And that thereafter and in November, 1918, the Power Company filed with the Commission these individual contracts and also schedules 42 and 43, together with its "general rules and regulations." And that no hearing was had by the Commission on either the contracts or the schedules, or the rates therein named. No finding whatsoever was made by the Commission respecting them. No notice of the filing thereof was given to anybody. The Commission simply received them and directed its secretary to file them. And that schedules 42 and 43 did not carry any symbol "A," or any footnote or any other sign, word or syllable denoting any change in any rate therein embraced, much less any advance in any such rate, or any rate whatsoever of the Power Company. But those schedules did carry the statement that those rates were only applicable to contracts subject to the "Rules and Regulations of the Company" on file with the Commission. Section 46 of those "Rules and Regulations of the Company" gave the consumer the option of cancelling the contract on thirty (30) days notice to the Company. And that cancellation provision is not in the contract between the Utah Copper Company and the Utah Power & Light Company, which contract is for a definite period of twenty-five (25) years from its date, January 1, 1913.

11. That no interference with said contract bearing date January 1, 1913, between the Utah Copper Company and the Utah Power & Light Company, is necessary to preserve the reliability of the service of the Utah Power & Light Company to its other customers, nor to obviate an increase in rates of the Utah Power & Light Company to its other customers, nor to enable the Utah Power & Light Company to earn sufficient money to pay its operating expenses and depreciation reserve charges, and some return

by way of dividend to its stockholders, (though possibly not a full return of 8%); and no consideration of any rights of the stockholders of the Utah Power & Light Company can enter into the public weal as affected by said contract; and even if said contract was a bad bargain, which the Utah Copper Company denies, nevertheless the police power of the State is not a thing to be or that can constitutionally be exercised for the purpose of relieving such stockholders from bargains which turn out to be unfortunate to them.

12. That as applied to the service rendered the Utah Copper Company by the Utah Power & Light Company, the rates, charges, terms and provisions of Schedule 43 of the Utah Power & Light Company, are unjust, unreasonable, too high, extortionate and confiscatory. And that as applied to the service rendered the Utah Copper Company by the Utah Power & Light Company, the rates, charges, terms and provisions of the proposed Schedule 57 of the Utah Power & Light Company are unjust, unreasonable, too high, extortionate and confiscatory.

Wherefore, the Utah Copper Company prays that this Honorable Commission take no action with respect to said contract bearing date January 1, 1913, between it and the Utah Power & Light Company, other than to sustain and approve the same; and that the Utah Copper Company be dismissed hence hereof without day.

Dated June 23d, 1920.

(Signed.) DICKSON, ELLIS,
LUCAS & ADAMSON,
Attorneys for Utah Copper Company.

EXHIBIT "M."

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH.

Case No. 230.

In the Matter of the Investigation of Special Contracts
of the Utah Power & Light Company for Electric
Service.

Submitted September 20, 1920. Decided October 18, 1920.

APPEARANCES.

Utah Power & Light Co.....	J. F. MacLane, Esq.
Ogden Portland Cement Co.....	C. R. Hollingsworth, Esq.
Portland Cement Company of Utah	
Salt Lake Pressed Brick Company.	
Auerbach Company	James Ingebretsen, Esq.
Union Portland Cement Company...	Henderson & Johnson
Carbon Fuel Company.....	E. V. Higgins, Esq.
Independent Coal & Coke Company...	M. E. Wilson, Esq.
Spring Canyon Coal Company....	
Tintic Milling Company.....	Cheney, Jensen & Holman
Standard Coal Company.....	A. R. Barnes, Esq.
U. S. Fuel Company.....	Howat, Marshall, Macmillan &
U. S. Smelting Company.....	Crow
Wattis Coal Company	
Salt Lake & Ogden Railway Co...	
Utah-Idaho Central Railway Co...	Devine, Stine & Gwilliam
M. M. Dahle & Edward Dahle...	M. M. & Edward Dahle
Layton Mill & Elevator Company...	M. H. Ellison, Esq.
Bransford Apartments	
Bingham Mines Company.....	
Chief Cons.-Eagle & Blue Bell	
Mining Company	
Daly-West Mining Company.....	
Daly-Judge Mining Company....	
Silver King Coalition Mines Co...	
Silver King Consolidated Min. Co.	
Utah Apex Mining Company.....	Rawlins, Ray & Rawlins
Utah Hotel	
Salt Lake & Utah Railroad Co...	
Salt Lake Terminal Company....	
Deseret News	
Denver & Rio Grande R. R. Co....	
Salt Lake City Union Depot.....	W. D. Riter, Esq.
Utah Light & Traction Co.....	Bagley, Clendenin, Fabian &
	Judd
Associated Canals Company.....	W. A. Folland, Esq.
Utah Lake Irrigation Company.....	A. J. Evans, Esq.
Cudahy Packing Company.....	Booth, Lee, Badger & Rich
Ogden Packing & Provision Co....	Joseph R. Chez, Esq.
Cardiff Mining & Milling Co.....	Lynn Thompson, Esq.
Utah Copper Company.....	Ellis, Dickson & Lucas
Utah Metal & Tunnel Company.....	Dey, Hoppaugh & Mark

Deseret National Bank.....	Young & Moyle
M. H. Walker Realty Co.....	T. Ellis Browne, Esq.
Oregon Short Line R. R. Co.....	J. W. Lyle, Esq.
American Foundry & Machine Co..	
Salt Lake Iron & Steel Company.	B. L. Liederman, Esq.
Town of Mantau	C. C. Dalby, Esq.
Murray City	John R. Pixton, Esq.

REPORT OF THE COMMISSION.

By the Commission:

This is an investigation made on the Commission's own motion of certain contracts entered into by and between the Utah Power & Light Company (hereinafter called the Power Company) and certain of its customers, in which contracts the rates, charges, facilities, privileges and conditions of service were apparently not in conformity with the schedules of the Power Company published and on file with this Commission and open to the public generally.

The Commission's records show that an order was issued on the 8th day of April, 1918, to all gas, water, telephone and electric utilities, to file with the Commission before the first day of June, 1918, schedules showing the rates, rules and regulations in any way affecting the service of such utilities; that thereafter, on the 23rd day of October, 1918, the said utility companies were required to notify the Commission in writing, within ten days from the said date, of any rules, regulations, contracts, privileges, facilities or agreements under which service was being given which were not in accordance with the published schedules then in effect and on file with the Commission; and within thirty days from said date to file with the Commission certified copies of all such documents, if there were any then existing.

Thereafter, on the 23rd day of November, 1918, the Power Company, complying with the Commission's order, filed with the Commission copies of all its contracts on other than standard schedules. The Commission thereupon made an examination of the contracts so filed by the Power Company, and as a result of said examination issued its order, dated September 27, 1919, calling

upon the Power Company and its customers who were being served under such special contracts, to appear before the Commission on the 11th day of November, 1919, then and there to justify the continuing in effect of such special contracts and the rates, charges, facilities and privileges granted thereunder, and to show the reasonableness and equity of such rates, charges, facilities and privileges, and further, to show that they are not in contravention of the provisions of Section 4789, Compiled Laws of Utah, 1917.

Subsequently, the date of the hearing was changed to the 8th day of December, 1919, on which date the Commission opened formal hearings on the said contracts. The hearings continued on various dates thereafter to and including August 5, 1920, on which date the final arguments were heard and time granted for the filing of briefs. The final brief was filed September 10, 1920.

Much testimony was taken in this case, as well as in Case No. 248, which is an application of the Utah Power & Light Company for permission to increase its power rates. By stipulation, the testimony in Case No. 248, so far as material, was deemed to be the testimony in this case. Thus there are some 4500 pages of testimony upon which conclusions may be drawn, both as affecting these contracts and as to the nature of the Power Company's business as a whole, and as to the rates it is now receiving for various classes of service.

In carrying out the provisions of the Act creating the Public Utilities Commission of Utah and specifically Sections 4788, 4789, 4798, 4799, and 4800, Compiled Laws of Utah, 1917, it appeared to be the duty of the Commission to initiate this proceeding. The particular sections referred to have to do with regulation of rates, fares, charges, rules, regulations, etc., and there is particularly imposed upon the Commission the duty of investigating apparently discriminatory practices. The Commission conceived it to be its duty to eliminate unjust discriminations and preferences wherever found to exist to the end that for the same class of service all rates and charges shall be uniform, just and reasonable.

The jurisdiction of the Commission is challenged by the holders of the special contracts referred to herein, their objections being based on the grounds that the contracts are, under the law, subsisting and binding obligations which cannot be vacated, modified or set aside by this Commission. Citation is made of the proviso in Paragraph 3, Section 4787, Compiled Laws of Utah, 1917, which reads as follows:

“Nothing in this title contained shall be construed * * * to prevent the carrying out of contracts for free or reduced rate passenger transportation or other public utility service heretofore made founded upon adequate consideration and lawful when made.”

The Commission in Case No. 6, gave consideration to the paragraph cited herein, in so far as it applied to franchise agreements between a municipality and a public utility corporation, and held that it had authority to modify or change the rates fixed by franchise contract. This decision of the Commission was sustained by the Supreme Court of Utah (Salt Lake City vs. Utah Light & Traction Company). The issues in the instant case were passed upon by the Supreme Court only in so far as reference was made to the question in the dictum used, wherein, with reference to the proviso relied upon here, the Court said:

“The foregoing provision is found among the exceptions in favor of employees and respecting agreements with other utilities. While the language of the exception is not as clear as it could have been made, yet it is manifest that it was not intended to refer to the rates fixed by franchise ordinances. In our opinion the manifest purpose of the Legislature was to prevent an injustice like that in the case of Louisville & N. R. Co. v. Mottley, 119 U. S. 467, 34 L. R. A. (N. S.) 671, 55 L. Ed. 297, 1 Sup. Ct. Rep. 265, in which case life passes were issued to Mottley and his wife upon a valuable consideration received by the railroad company * * *. Under that decision, therefore,

the Mottleys were prohibited from riding on their passes, although they had paid for them before the congressional act had been passed. Moreover, it sometimes happens that passes are issued in payment for right of way and other privileges granted by the owners of land to common carriers. Under the Mottley decision, however, all such passes would be void regardless of the consideration that the owners had paid to the common carriers. The Legislature, therefore, very properly, and as we think, wisely, excepted such cases from the operations of the Utilities Act in so far as intrastate business is concerned. That is all that was attempted, and all that was done, by the adoption of the exception aforesaid." (P. U. R., 1918-F, p. 390.)

In giving effect to the provisions of the law, it should be construed in the light of its scope, purpose and intention. This calls for a broad, liberal view of the statute as a whole. The leading thought in the entire Act would seem to be that control of service corporations such as are designated and defined in the Act is taken over by the State; and that power and authority is vested in the Commission to supervise and regulate any and all things which are necessary in carrying out the purposes of the law. Among the leading and important things absolutely necessary in the administration of the law is the regulation of rates at which a service corporation shall give service or furnish a commodity. In the work of control, an investigation must be made of all rates, fares, contracts, rules, etc. If the attitude and contention of the consumers is correct, the Commission is forestalled from any investigation of action looking to effective control and regulation and this would prevent the Commission from fixing, regulating and establishing such rules, rates and charges as are just and reasonable, and free from discrimination or preferential provisions. It was the purpose of the Commission in instituting this inquiry to determine what, if any, unjust discriminations or preferences existed in the special contracts and to rectify the

same. This, it appears, must be done, if the purpose of the law is to be carried out.

The contention of the companies holding special contracts that they come under the exception clauses has been ably presented, but it appears to the Commission that it is in line with the spirit of the law in concluding that such an exception does not and was not intended to prevent an investigation such as is undertaken in this case.

If the rates in special contracts such as those now under consideration were to be made special matter of legislative enactment and relieved from any investigation with a view of protecting and perpetuating such rates, as is claimed by the contract consumers, it would seem that a matter of such importance would have received the direct attention of the Legislature in such a manner as to place the subject beyond any question as to what was intended. On this phase of the question the Commission, in its decision in Case No. 6, said:

“It is unreasonable to think that the Legislature would enact a law creating a public utilities commission, expressly clothing it with broad regulatory powers over common carriers, and then deliberately by the insertion of a clause in an obscure position in one sub-section of the law, annul the powers of the Commission that were conferred by other parts of the Act, and by this means perpetuate an injustice either on the public or on the utilities concerned. We find no warrant for accepting the theory that such action was taken or intended to be taken by the Legislature.”

In the cases now under consideration there is no contention but what they were and are legal subsisting contracts as between the parties thereto. No denial is attempted of the validity and legality of any of the contracts when made. The State has not seen fit to exercise its supervision of rates for public utility service, and in the absence of state regulation, rates were a subject of private contract, and the rates named in such contracts persist and continue legal unless and until the State steps in and assumes jurisdiction as to said rates. The

exercise of this right by the State is in the interest of the public generally, primarily to make certain that all sections of the public are being fairly treated as to cost of service. The interest of the public is paramount, and individual and private contracts if found to be discriminatory or preferential must give way in furtherance of the principle of justice.

Without going into a further discussion of the question herein raised, we are forced to the conclusion that the position taken by the Commission in Case No. 6, as well as its action upon the demurrer in the present case, was and is correct, and that the exception clause referred to upon which the right of the Commission is questioned does not prevent the Commission from investigating said contracts with a view to modifying and changing them as far as they relate to rates, fares, charges, facilities and privileges.

As to the question of adequacy of consideration in the contracts under investigation, it appears to the Commission that the Legislature intended this clause to mean something more than a mere legal consideration, because the language would have been unnecessary had there been nothing else than this in mind. Without a legal consideration, no contract is binding and enforceable. Each and all of the contracts herein being considered are founded, of course, upon a legal consideration, but in few, if any, of them is there such a special consideration as would entitle them to classification separate and distinct from the general groups of contracts under investigation.

The term "adequate" as used in the exception clause would seem to imply a separate and additional consideration than the stipulated price to be paid for the service or commodity. It appears to the Commission that in the absence of a showing that as part of the contract price paid for service there was actually passed from the consumer something of value to the Power Company in the giving of service to the public, there was no such special consideration as would make the reduced contract rate non-discriminatory. Something of value must be

shown to have moved from the beneficiary of the reduced rate or free service to the utility rendering such service. In that event, the company would have received something for which it should properly be charged. And if the showing was that such thing of value actually did pass, the Commission would then have to determine the amount of such value and apply it along with the rate fixed in the contract, and thereby ascertain whether or not the thing of value passed from the consumer to the Power Company justified in whole or in part the reduced rate named in the contracts.

In only a few, if any, of the total number of contracts involved herein was there adequate showing that such special consideration passed to the Power Company. The large majority of contracts clearly carry no such consideration.

The Commission, therefore, finds:

1. That it has jurisdiction over rates, charges, facilities and conditions of service in existing contracts under consideration in these proceedings, and has authority to modify or change the same.

2. Subsequent to the filing of the special contracts by the Power Company with the Commission, the contracts of the following consumers expired and each and all of said consumers thereupon took service under regular schedule. Further investigation in respect to said consumers and the contracts under which they formerly operated is, therefore, unnecessary.

Dooly Building.	Beaver Dam Mining Company.
Newhouse Realty Company.	Ogden Trust Company.
South Jordan Pump & Pipe Line Company.	Three Kings Silver Mining Co.
R. M. Holt.	Empire Theatre.
Ohio Copper Company.	Clayton Investment Company.
Warren Irrigation Company.	Bransford Apartments.
Rex Theatre.	Charles Peterson.
David Eccles Estate.	Vienna Bakery.
Rosenberg Investment Company.	Hercules Powder Company.
American Can Company.	Utah Condensed Milk Company.
	Frank M. Wilson.

3. After a full consideration of all material facts that may or do have any bearing upon these contracts, the Commission finds that the contracts under which service is being given to the following consumers do not

carry such special consideration as will entitle them to service at other than standard schedule rates open to the public generally as evidenced by the schedules of the Power Company on file with the Commission.

Salt Lake & Utah Railroad Com-	Salt Lake Iron & Steel Co.
pany.	American Foundry & Machine Co.
Chief Con. and Eagle & Blue Bell	Deseret National Bank.
Mining Company.	Standard Coal Company.
Cameron Coal Company.	Portland Cement Co. of Utah.
U. S. Fuel Company.	Daly West Mining Company.
Salt Lake Terminal R. R. Co.	Walker Realty Company.
U. S. Smelting Company.	Utah Cons. Mining Co.
Board of Canal Presidents (Asso-	Utah Copper Co.
ciated Canals Co.).	Cudahy Packing Company.
Salt Lake Union Depot.	Angley & Carmichael Irr. Co.
American Smelting & Refining Co.	Carbon Fuel Company.
Silver King Cons. Mining Co.	Tintic Milling Company.
Utah Metals & Tunnel Co.	Utah Light & Traction Co.
Union Portland Cement Co.	John W. Gates (Joseph W. Gates).
Cardiff Mining Company.	Samuel H. Auerbach (Auerbach
Independent Coal & Coke Co.	Co.).
Spring Canyon Coal Co.	James H. Gardner.
Wattis Coal Company.	Utah Iron & Steel Co.
Utah-Idaho Central R. R. Co.	Silver King Coalitlon Co.
Herald-Republican.	Bingham Mines Company.
Utah Lake Irrigation Co.	Ogden Portland Cement Co.
Oregon Short Line R. R. Co.	New Era Irrigation Co.
Denver & Rio Grande R. R. Co.	Ogden Packing & Provision Co.
Utah Apex Mining Co.	Pelican Point Irrigation Co.
State Mill & Elevator Co.	Town of Mantua.
Layton Mill & Elevator Co.	

The standard schedules now on file with the Commission applicable to each of the power users hereinbefore in this paragraph mentioned, should be applied to the service rendered to said consumers in lieu of the rates and charges in effect under special contracts, service under said standard schedules to commence upon the effective date of this order, and to continue until changed by further order of the Commission. If the finding of the Commission in Case No. 248 results in a reduction of the standard schedule rates the Commission retains jurisdiction to order such reparation as is just and reasonable, and the Power Company will hold itself ready to make any such reparation as the Commission may order.

4. The Commission is of the opinion that the evidence before it as to the special consideration involved in each of the contracts of the following consumers war-

rants it in making a separate and further investigation as to each of said contracts, and while the Commission will direct that pending an opinion and finding as to each of these contracts, the holders thereof shall be placed on standard schedules applicable to like service. The Power Company will also hold itself ready to make such reparation as the Commission may order, if any be found just and reasonable;

Deseret News.
Hotel Utah.

Salt Lake & Ogden Railroad Com-
pany.

Judge Mining & Smelting Com-Salt Lake Pressed Brick Company.
pany. Progress Company.

5. There remains but one special contract to be discussed, that of Murray City. The granting of a franchise by Murray City to the Power Company authorizing it to construct, operate and maintain electric pole lines in the streets and public places of Murray City, was the consideration for the rate stated in the special contract, which is for break-down service. The extent and conditions under which the City of Murray has received service under this contract in the past has been carefully considered by the Commission, and it finds that for the present and until further order of the Commission, this contract should be continued in effect.

6. It appears from the evidence submitted during this hearing that certain holders of special contracts have been doing switching or other service for the Power Company, for which no money compensation has been received. The Power Company will immediately arrange to pay for such service directly, or if it elects to do so, perform the service itself.

The effective date of this order shall be 12:00 o'clock noon, the 22nd day of October, 1920.

An appropriate order will be issued.

(Signed) JOSHUA GREENWOOD,

(Signed) HENRY H. BLOOD,

(Signed) WARREN STOUTNOUR,

Commissioners.

(SEAL.)

Attest:

(Signed) HAROLD S. BARNES,

Assistant Secretary.

ORDER.

At a session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 18th day of October, A. D. 1920.

Case No. 230.

In the Matter of the Investigation of Special Contracts of the Utah Power & Light Company for Electric Service.

This case being at issue upon the Commission's own motion, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

It is ordered, that the investigation with respect to the following consumers be, and it is hereby, dismissed, for the reason that the special contracts under which said consumers were being served have expired and service is now being given under standard schedules;

Dooly Building.	Beaver Dam Milling Co.
Newhouse Realty Company.	Ogden Trust Company.
South Jordan Pump & Pipe Line Company.	Three Kings Silver Mining Co.
R. M. Holt.	Empire Theatre.
Ohio Copper Company.	Clayton Investment Co.
Warren Irrigation Co.	Bransford Apartments.
Rex Theatre.	Charles Peterson.
David Eccles Estate.	Vienna Bakery.
Rosenberg Investment Co.	Hercules Powder Co.
American Can Company.	Utah Condensed Milk Co.
	Frank M. Wilson.

Ordered further, that the contracts under which the following consumers have hitherto received service, be, and the same are hereby, modified to the extent that the rates, rules and regulations prescribed in the standard schedules of the Power Company now on file with the Commission, be, and they are hereby, applied to the service rendered to or for the said consumers in lieu of the rates, rules and regulations provided in the said contracts; provided, that the Power Company shall hold itself ready to make such reparation, if any, as the Com-

mission may order after its opinion and order in Case No. 248 is issued:

Salt Lake & Utah Railroad Co.	Tintic Milling Company.
Cameron Coal Company.	Wattis Coal Company.
U. S. Fuel Company.	Utah Idaho Central R. R. Co.
Salt Lake Terminal Co.	Utah Lake Irrigation Co.
U. S. Smelting Company.	Herald-Republican.
Board of Canal Presidents	Oregon Short Line R. R. Co.
(Associated Canals Co.)	Denver & Rio Grande R. R. Co.
American Smelting & Refining Co.	Utah Apex Mining Co.
Silver King Cons. Mining Co.	State Mill & Elevator Co.
Utah Metals & Tunnel Co.	Layton Mill & Elevator Co.
Union Portland Cement Co.	Salt Lake Iron & Steel Co.
Cardiff Mining Company.	American Foundry & Machine Co.
Independent Coal & Coke Co.	Deseret National Bank.
Spring Canyon Coal Co.	Utah Light & Traction Co.
Chief Con. & Eagle & Blue Bell	John W. Gates (Joseph W. Gates).
Mining Company.	James H. Gardner.
Standard Coal Company.	Samuel H. Auerbach (Auerbach
Portland Cement Co. of Utah.	Co.)
Daly-West Mining Company.	Utah Iron & Steel Co.
Walker Realty Co.	Silver King Coalition Co.
Salt Lake Union Depot.	Pingham Mines Company.
Utah Cons. Mining Co.	Ogden Portland Cement Co.
Utah Copper Company.	New Era Irrigation Co.
Cudahy Packing Company.	Ogden Packing & Provision Co.
Angley & Carmichael Irr. Co.	Pelican Point Irr. Company.
Carbon Fuel Company.	Town of Mantua.

Ordered further, that the contracts under which the following consumers have hitherto received service, be, and the same are hereby, modified, to the extent that the rates, rules, and regulations, prescribed in the standard schedules of the Power Company now on file with the Commission, be, and they are hereby, applied to the service rendered to or for the said consumers in lieu of the rates, rules and regulations provided in the said contracts; provided, that the Commission shall, and it hereby does, retain jurisdiction over each of said contracts for the express purpose of further investigation, particularly as to the special consideration, if any, involved in each of said contracts: provided further, that the Power Company shall hold itself ready to make such reparation, if any, as the Commission may order after investigation has been concluded and final opinion and order in each of said cases is issued; provided further, that the Power Company shall hold itself ready to make such reparation, if

any, as the Commission may order after its opinion and order in case No. 248 is issued:

Deseret News.
Hotel Utah.

Salt Lake & Ogden Railroad Com-
pany.

Judge Mining & Smelting Com-Salt Lake Pressed Brick Company.
pany. Progress Company.

It is further ordered, that the contract under which the City of Murray has hitherto received service shall continue in force and effect until further order of the Commission.

Ordered further, that the Power Company shall immediately arrange to pay for any and all switching or other service rendered to it directly or indirectly by the customers.

Ordered further, that the service under standard schedules, rules and regulations as prescribed by this order shall commence on the effective date hereof, at twelve o'clock noon the 22nd day of October, 1920.

By the Commission.

(Signed) HAROLD S. BARNES,
(SEAL.) Assistant Secretary.

CERTIFICATE.

Case No. 230.

STATE OF UTAH, }
COUNTY OF SALT LAKE. } ss.

I hereby certify that the foregoing is a full, true and correct copy of the original report and order in the foregoing entitled matter or cause, now of record or on file in the office of the Public Utilities Commission of Utah.

In witness whereof, I have hereunto set my hand and affixed the seal of said Commission this 19th day of October, 1920.

(Signed) HAROLD S. BARNES,
(SEAL) Assistant Secretary of Said Commission.

EXHIBIT "N."

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH.

In the Matter of the Investigation of Special Contracts
of the Utah Power & Light Company, for Electric
Service.

Case No. 230.

APPLICATION OF THE UTAH COPPER COMPANY FOR A RE-
HEARING WITH RESPECT TO THE MATTERS COV-
ERED BY THE SCOPE OF THE ORDER OF THE
ABOVE NAMED COMMISSION ENTERED
UNDER DATE OF OCTOBER 18TH,
A. D. 1920.

Comes now the UTAH COPPER COMPANY, a corporation, one of the defendants or respondents named in the above entitled cause or proceeding, and one of the persons, companies or corporations mentioned, named and referred to in the decision of the above named Commission and the order of the above named Commission, made and entered in the above entitled cause or proceeding under date of October 18th, 1920, and herewith and hereby, and in due time, and prior to the effective date of said order of the above named Commission in the above entitled cause or proceeding bearing date October 18th, 1920, which said order by the terms thereof on its face becomes effective at twelve o'clock noon on the 22nd day of October, 1920, makes and files this, its petition for a rehearing in the above entitled cause or proceeding and for a rehearing with respect to the matters affected by or embraced within the purport and scope of said decision and order of said Commission, dated October 18th, 1920, in the above entitled cause or proceeding, and for a rehearing in said above entitled cause or proceeding with respect to the matters and things hereinafter specified, and for a suspension of said order bearing date October 18th, 1920, in the interim, upon the grounds that said decision and said order and each of them are unlawful, illegal, unjust, unwarranted, and should be changed, abrogated and annulled, for the following reasons and on the following

grounds and each of them as applied to the Utah Copper Company and the contract made and entered into by and between the Utah Power & Light Company and the Utah Copper Company under date of January 1st, 1913, to-wit:

1. Said Commission erred in making and entering under date of September 27th, 1919, the order to show cause wherein and whereby the above entitled matter or proceeding was instituted or begun.

2. Said Commission erred in overruling the special appearance and motion of the Utah Copper Company to quash, vacate, set aside and annul the said order to show cause issued by said Commission herein under date of September 27th, 1919, which said motion to quash bore date December 8th, 1919, for each and every one of the reasons and grounds in said motion set forth, to the overruling of which the Utah Copper Company duly excepted, not only generally but specifically as to each ground of said motion.

3. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because there is no authority, jurisdiction or power conferred upon, vested in or given said Commission to institute, conduct or prosecute this particular proceeding with respect to this company, in the manner or by the means herein attempted.

4. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because there is no authority, jurisdiction or power conferred upon, vested in or given said Commission to institute, conduct or prosecute this particular proceeding with respect to this company or with respect to said contract, in the manner or by the means herein attempted.

5. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because there is no authority, jurisdiction or power conferred upon, vested in or given said Commission to institute, conduct or prosecute this particular proceeding with respect to this company or with respect to said

contract, in the manner or by the means herein attempted, this proceeding not being founded upon a complaint as required by the Act of the Legislature of the State of Utah, approved March 8, 1917, (c. 47, Laws of Utah, 1917,) entitled "An Act Creating a Public Utilities Commission, etc."

6. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because as respects this company said Commission acted without any jurisdiction and acted in excess of its jurisdiction in making, entering and issuing said order to show cause.

7. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because as respects said contract, said Commission acted without any jurisdiction and acted in excess of its jurisdiction in making, entering or issuing said order to show cause.

8. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said order to show cause does not state, set forth or contain any facts sufficient to confer upon, vest in, draw to or disclose in said Commission any right, power, authority or jurisdiction to institute, prosecute, entertain, hear or determine any of the matters and things referred to in said order to show cause as respects this company, or to make any order or finding with respect to this company or with respect to said contract. And on the contrary, said order to show cause shows upon its face that said Commission had and has no such right, power, authority or jurisdiction in the premises as respects this company or as respects said contract.

9. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said Commission had and has no jurisdiction over the subject matter of said order to show cause or said investigation as respects this company or as respects said contract.

10. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in

that and because said Commission had and has no jurisdiction of this company in the face of its protest entered herein *in limine*.

11. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said order to show cause is illegal, null and void and not warranted by any provision of law.

12. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said order to show cause is illegal, null and void and is unconstitutional in that it deprives this company of its property without the process of law and denies to this company the equal protection of the law, in violation and contravention of the act creating said Public Utilities Commission as aforesaid, and in violation and contravention of the provisions of Section 1, Article XIV, of the Amendments to the Constitution of the United States of America, and Section 7 of Article I of the Constitution of the State of Utah.

13. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said Commission has no right, power, authority or jurisdiction to institute this proceeding looking to any abrogation, interference with, or impairment of said contract between this company and said Utah Power & Light Company.

14. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said order to show cause issued herein as aforesaid does not state, set forth or contain any facts sufficient to confer upon, vest in or draw to said Commission any right, power, authority or jurisdiction to inquire into or make any investigation with respect to, or make any order or conduct any hearing or take any evidence with respect to this company or said contract between this company and the Utah Power & Light Company.

15. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because this Commission had and has no right, power, authority, or jurisdiction to pass upon or adjudicate any rights under, respecting, existing or growing

out of contracts made and entered into prior to the passage of said Act (said C. 47 of the Laws of Utah of 1917).

16. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said Commission had and has no right, power, authority or jurisdiction to abrogate, cancel, modify, impair or otherwise interfere with contracts entered into prior to the creation of said Commission and prior to the passage of said Act (said C. 47 of the Laws of Utah of 1917), which at such time were lawful and founded upon an adequate consideration.

17. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because the Commission has only such powers and duties as have been conferred upon it by said Act creating it as aforesaid; and the Legislature of the State of Utah has not granted to, conferred upon, or vested in said Commission any right, power, or authority to abrogate, cancel, modify, impair or interfere with said contract or any of the provisions thereof; but, on the contrary, by subdivision C of Section 5 of Article III of said Act, it is provided, in substance and effect, that nothing in said Public Utilities Act contained shall be construed to prevent the carrying out of contracts for free or reduced rates, public utility service, made before the passage of said Act, which are founded upon an adequate consideration and lawful when made, all of which conditions are found upon the face of said contract between this company and said Utah Power & Light Company.

18. Said Commission erred in making and entering said decision and order of October 18, 1920, herein, in that and because should the Commission fail to give full force and effect to the provisions of subdivision C of Section 5 of Article III of the said Public Utilities Act hereinbefore referred to, by holding or ruling that it has any jurisdiction, right, power or authority to change, alter, abrogate, amend, impair or otherwise interfere with said contract or the rates, charges, facilities or privileges thereunder and therein provided for, such holding or ruling would deprive this company of its property without

due process of law and would deprive this company of the equal protection of the law and would impair the obligation of said contract, in violation and contravention of the provisions of the Constitution of the United States of America and the Constitution of the State of Utah.

19. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said contract shows upon the face thereof that it, together with the rates, charges, privileges and facilities therein embraced, involve a commodity, service or transaction of and in interstate commerce, and that any attempted abrogation, cancellation or impairment thereof or interference therewith by this Commission would impose a burden upon and interfere with interstate commerce, in violation and contravention of the provisions of Section 8 of Article I of the Constitution of the United States.

20. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said contract was made and entered into prior to the enactment of said Public Utilities Act aforesaid, and was founded upon an adequate consideration and was lawful when made.

21. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said order to show cause contains nothing but conclusions of law, without any statement or finding of fact whatsoever.

22. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because the conclusions of law set forth in said order to show cause are erroneous upon their face.

23. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said Commission has no right, power, authority or jurisdiction to impose any burden of justifying said contract or the rates therein provided for upon this company.

24. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because the Legislature of the State of Utah has

not directly abrogated, impaired or interfered with said contract, and has not delegated to the Commission any power, right, authority or jurisdiction to abrogate or impair the same, or interfere with.

25. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because the Utah Copper Company is not under the jurisdiction of the Commission and is not a public utility defined, mentioned or referred to in said Act, or thereby placed under the jurisdiction of the Commission; and it is beyond the right, power, authority or jurisdiction of the Commission to issue any order addressed or directed to said Copper Company requiring it to do or refrain from doing anything with respect to said contract.

26. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said contract is excepted from, removed from and withdrawn from the jurisdiction of the Commission by that portion of Section 5 of Article III of said Act creating said Public Utilities Commission, wherein and whereby it is provided that nothing in said Act shall be construed so as to prevent the carrying out of contracts for free or reduced rates, public utility service, theretofore made and founded upon an adequate consideration and lawful when made.

27. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because the Commission had or has before it nothing to show and nothing whereon to base or to justify any finding, statement or conclusion that the rate mentioned in said contract, or said contract itself, was unreasonable, confiscatory, inadequate, unremunerative, unjust, discriminatory, preferential or unlawful.

28. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because the abrogation of said contract is not one of the duties imposed on said Utah Power & Light Company by law.

29. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because the schedules in said order referred to

were and are inapplicable to said contract, and have not and never have had any force or efficacy with respect thereto.

30. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because it was and is beyond the right, power, authority or jurisdiction of said Commission to make any ex parte finding or ruling that said contract was or is invalid or unlawful, without having afforded this company a hearing insured to it in accordance with the due process of law guaranteed it by the Constitution of the United States of America and the Constitution of the State of Utah.

31. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said schedule and tariffs in said order to show cause referred to have not and could not have any operative effect to abrogate said contract or to increase any of the rates therein named, as neither said Utah Power & Light Company nor said Commission has ever followed the procedure prescribed by said act creating said Commission relative to increasing rates, charges or tolls in such contract provided.

32. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said contract contains special agreements and provisions on its face correlated with and having a distinct relation to the rates therein named, and contains leasing provisions which are beyond the right, power, authority or jurisdiction of the Commission to consider, investigate, abrogate, impair or interfere with, and said contract is a single, specific and indivisible contract.

33. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said contract contains provisions relative to the leasing by this company to said Utah Power & Light Company of the steam plant of this company, as therein in detail set forth, and any order or ruling of the Commission abrogating, canceling, impairing or interfering therewith, or attempting so to do, would impair the

obligation of such contract in such respect, in violation of the provisions of Section 10 of Article I of the Constitution of the United States and of Section 18 of Article I of the Constitution of the State of Utah, and would deprive this company of its property without due process of law and deny it the equal protection of the laws, in violation and contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States of America, and in violation and contravention of Section 7 of Article I of the Constitution of the State of Utah.

34. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because the uncontradicted evidence herein shows that the electric power furnished the Utah Copper Company by the Utah Power & Light Company under the said contract bearing date January 1st, 1913, between said last named companies, is and always has been generated and produced in the State of Idaho and transmitted into the State of Utah to the plants of the Utah Copper Company located in Utah; and that the rates, charges, privileges, and facilities embraced in said contract involve and are for a commodity, service or transaction of and in interstate commerce, and that the attempted modification, abrogation, cancellation or impairment thereof or interference therewith or with any part or portion thereof, by said Commission, imposes a burden upon and interference with interstate commerce, in violation and contravention of the provisions of Section 8 of Article I of the Constitution of the United States of America.

35. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because as appears by the uncontradicted evidence in the record herein, no interference with said contract of January 1st, 1913, between the Utah Copper Company and the Utah Power & Light Company was or is necessary to preserve the reliability of the Utah Power & Light Company's service to its other customers, or to obviate an increase in rates to pay its operating expenses or depreciation charges and some return to its stockholders; and any interference with said contract could, under the evidence in this case, be necessary only, if at all, in

order to increase the return to the stockholders of the Utah Power & Light Company; but no consideration of any rights of those stockholders can enter into the public weal, and even if said contract was a bad bargain, which the Utah Copper Company always has denied and does now deny, nevertheless the police power of the state is not a thing to be, or that constitutionally can be, exercised for the purpose of relieving such stockholders from bargains which turn out to be unfortunate for them, and under the uncontradicted evidence in this case, this is not a case or contract falling properly within the police power of the state to abrogate or interfere with said contract, and the attempted interference by the said commission with said contract in and by its said decision and order is unconstitutional, null and void, and in contravention of and in conflict with Section 10 of Article I of the Constitution of the United States, and Section 18 of Article I of the Constitution of the State of Utah, inhibiting legislation impairing the obligation of a contract.

37. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because it appears by the uncontradicted evidence herein that the contract of January 1, 1913, between the Utah Copper Company and the Utah Power & Light Company was founded upon an adequate consideration within the meaning of that expression as employed in subdivision C of Section 5 of Article III of the act of the Legislature of the State of Utah passed February 27th, 1917 (Chapter 47, Laws of 1917,) entitled "An Act creating a Public Utilities Commission," etc., which took effect upon its approval on March 8th, 1917, and is now Title 81, Sections 4775 to 4863, inclusive, of the Compiled Laws of Utah of 1917; and which said subdivision C of said Section 5 of Article III of said original act is brought down in subdivision 3 of Section 4787 of the Compiled Laws of Utah, 1917; and therefore said Commission had and has no right, power, jurisdiction or authority to abrogate, modify, interfere with or suspend said contract, or any part or portions thereof, as is in and by said decision and order attempted, or in any other manner; and said contract was made on or prior to the 1st day of January,

1913, over four years prior to the passage of the said act creating the said Public Utilities Commission of Utah, and said contract was lawful when made.

38. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because the State of Utah has not, through the Legislative Department of its government, either in the act creating said Public Utilities Commission of Utah or in any other act, assumed any jurisdiction over or as respects said contract of January 1st, 1913, between the Utah Copper Company and the Utah Power & Light Company, or any part or portion thereof, or any of the rates therein named.

39. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said Commission erred in finding that there was not in said contract of January 1st, 1913, between the Utah Copper Company and the Utah Power & Light Company, such a special consideration as entitled it to a classification separate and distinct from the general groups of contract under investigation herein.

40. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said Commission misconstrued and misapplied the term "adequate" as used in the excepting clause in the statute hereinbefore and in the said decision referred to, and erred in holding that the term "adequate" as therein employed implied a separate and additional consideration over and above and other than the stipulated price to be paid for the service or commodity.

41. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because there are no existing standard schedules of rates applicable to the class of service covered by said contract of January 1st, 1913, between the Utah Copper Company and the Utah Power & Light Company; and the Commission had no right, power, jurisdiction or authority to make applicable to the service of the Utah Copper Company a rate named in any schedule on file with this Commission, until the Commission should first have determined that such rate named in such filed schedule

was reasonable, fair and just when applied to the service to be rendered the Utah Copper Company under conditions specified in or analogous to those specified in said contract, and this said Commission has never as yet done, but, on the contrary, as appears upon the face of said decision and order of October 8th, 1920, the Commission specifically reserves to itself this question and continues its jurisdiction over this cause for the specified purpose of determining in the future whether or not the so-called standard schedule rates are fair, reasonable and just as applied to the service of the contracts in said decision and order enumerated.

42. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because the language of the act requires only an adequate consideration and not a special consideration, and furthermore, even if the act required a special consideration, on the uncontradicted evidence in this case there was such a special consideration for the contract of January 1st, 1913, between the Utah Copper Company and the Utah Power & Light Company, and said contract between the Utah Copper Company and the Utah Power & Light Company was founded upon an adequate consideration when it was made, and is founded upon an adequate consideration at the present time.

43. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because at the time this proceeding was started, the contract of January 1st, 1913, between the Utah Copper Company and the Utah Power & Light Company was not, and said contract is not now, discriminatory as respects any filed schedules or filed schedule rates; and the existing schedules of the Utah Power & Light Company were and are not applicable to said contract, and never have been, and no hearing was ever held or had by the Commission on the schedules filed by the Power Company pursuant to the act creating the Public Utilities Commission, or pursuant to Tariff Circular No. 3 of the Commission, or pursuant to Supplement No. 1 to Tariff Circular No. 3 of the Commission, and the Commission has never made any finding whatsoever respecting the

reasonableness, fairness or adequacy, of the rates named in said filed schedules, or any of them, as applied to the service rendered the Utah Copper Company under conditions similar to or analogous with those embraced in said contract.

44. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because even if the Commission had the power to abrogate the contract of January 1, 1913, between the Utah Copper Company and the Utah Power & Light Company, it has absolutely no power, right, authority or jurisdiction to compel the Utah Copper Company to accept services from the Utah Power & Light Company for the remaining term of the said contract at any increased rate; and the attempt so to do made by said decision and order of October 18th, 1920, and said order and said decision and each and both of them is and are unconstitutional, null and void, in that it deprives the Utah Copper Company of its property without due process of law, and denies to it the equal protection of the laws, in violation and contravention of the inhibitions of the Constitution of the United States of America and of the State of Utah in that behalf made and provided; and the Utah Copper Company is not under the jurisdiction of said Commission and is not embraced within the Public Utilities defined in the act; and it was not and is beyond the right, power, authority or jurisdiction of said Commission to issue any order or orders directed to the Utah Copper Company, requiring it to do or refrain from doing anything, and all that the Commission could do, if anything, would be to make an order directed to the Utah Power & Light Company, requiring it to terminate the said contract or to no longer furnish service under the said contract, leaving it optional with the Utah Copper Company to take the service or not at an increased rate, as it might see fit, or as it might be required to do by a court of competent jurisdiction.

45. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because the Public Utilities Commission of Utah has not any authority or power to enter said order, or

any order, changing or modifying any of the terms of said contract of January 1, 1913, between the Utah Power & Light Company and the Utah Copper Company, for the reason that such order is in violation of Section 10 of Article I of the Constitution of the United States of America, and Section 18 of Article I of the Constitution of the State of Utah, prohibiting the passage of any law impairing the obligation of contracts.

46. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because in making and entering the same the Commission has not regularly pursued its authority.

47. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said decision and order violates the rights of the Utah Copper Company to due process of law and the equal protection of the laws and the sanctity of its contract, in violation of the Constitution of the United States of America and of the Constitution of the State of Utah.

48. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because the contract bearing date January 1st, 1913, between the Utah Copper Company and the Utah Power & Light Company was made prior to the enactment, passage or approval of the Act of the Legislature of the State of Utah, approved March 8, 1917, (Chapter 47, Laws of Utah, 1917), entitled "An Act Creating a Public Utilities Commission, etc."; the contract bearing date January 1st, 1913, between the Utah Copper Company and the Utah Power & Light Company, was lawful when made; the contract bearing date January 1st, 1913, between the Utah Copper Company and the Utah Power & Light Company, was founded upon an adequate consideration when made; and said Commission has no right, power, authority or jurisdiction to abrogate, cancel, modify, impair or otherwise interfere with said contract bearing date January 1st, 1913, between the Utah Copper Company and the Utah Power & Light Company, which said contract was entered into prior to the creation of said Commission and prior to the passage

of said act, said Chapter 47, Laws of Utah, 1917, and which said contract was lawful and founded upon an adequate consideration when made.

49. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because under the facts and circumstances of this case, as already shown in the evidence herein, and to be further developed by the evidence herein, any action or order of this Commission abrogating, cancelling, modifying, impairing, or otherwise interfering with said contract bearing date January 1st, 1913, between the Utah Copper Company and the Utah Power & Light Company, or attempting or tending so to do, would be unconstitutional, illegal, null and void in that the same would impair the obligation of said contract and deprive the said Utah Copper Company of its property without due process of law and deny to said Utah Copper Company the equal protection of the laws, in violation and contravention of the provisions of the Constitution of the United States of America and the Constitution of the State of Utah, and particularly the provisions of Section 10 of Article I and the provisions of the Fourteenth Amendment, of and to the Constitution of the United States of America, and the provisions of Section 7 and Section 18 of Article I of the Constitution of the State of Utah.

50. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because the electric power furnished the Utah Copper Company by the Utah Power & Light Company under said contract bearing date January 1st, 1913, between said companies, is and always has been generated and produced in the State of Idaho and transmitted into the State of Utah to the plants of the Utah Copper Company located in Utah, and the rates, charges, privileges and facilities embraced in said contract involve and are for a commodity, service or transaction of and in interstate commerce; and that any attempted abrogation, cancellation or impairment thereof or interference therewith, or of or with any part or portion thereof by this Commission, would impose a burden upon and interfere with interstate commerce in violation and contravention of the

provisions of Section 8 of Article I of the Constitution of the United States of America.

51. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because the consideration of said contract bearing date of January 1st, 1913, between the Utah Copper Company and the Utah Power & Light Company, is and at all times since the making thereof has been adequate, equitable, fair and just.

52. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because said contract bearing date January 1st, 1913, between the Utah Copper Company and the Utah Power & Light Company is not and never has been unduly or unjustly discriminatory or preferential.

53. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because on April 8th, 1918, over a year after the Act had been in effect, the Commission issued its "Tariff Circular No. 3," requiring the Utilities to file their tariff schedules by June 8th, 1918. That circular carried the express mandate that: "Whenever any change is made in any rate, resulting in an advance of such rate, such change shall be denoted by the symbol 'A' shown in connection with rate changed, and on the same page shall be shown a footnote giving reference to such symbol and explaining its use, thus: 'A' denotes advance." And that at that time the Power Company had not filed any tariff schedule whatsoever. Over sixteen months passed, and still no schedules were filed. And that on October 23rd, 1918, the Commission issued its order known as "Supplement No. 1 to Tariff Circular No. 3." That order called attention to the statute (Sub. 2, Sec. 4784, C. L., 1917), as requiring the Utility corporation to file its "schedules" and also its "contracts" with the Commission. And that thereafter and in November, 1918, the Power Company filed with the Commission these individual contracts and also schedules 42 and 43, together with its "general rules and regulations." And that no hearing was had by the Commission on either the contracts or the schedules, or the rates therein named. No

finding whatsoever was made by the Commission respecting them. No notice of the filing thereof was given to anybody. The Commission simply received them and directed its secretary to file them. And that schedules 42 and 43 did not carry any symbol "A" or any footnote or any other sign, word or symbol denoting any change in any rate therein embraced, much less any advance in any such rate, or any rate whatsoever of the Power Company. But these schedules did carry the statement that those rates were only applicable to contracts subject to the "Rules and Regulations of the Company" on file with the Commission. Section 46 of those "Rules and Regulations" of the Company gave the consumer the option of cancelling the contract on thirty (30) days' notice to the company. And that cancellation provision is not in the contract between the Utah Copper Company and the Utah Power & Light Company, which contract is for a definite period of twenty-five (25) years from its date, January 1st, 1913.

54. Said Commission erred in making and entering said decision and order of October 18th, 1920, herein, in that and because no interference with said contract bearing date January 1, 1913, between the Utah Copper Company and the Utah Power & Light Company, is necessary to preserve the reliability of the service of the Utah Power & Light Company to its other customers, nor to obviate an increase in rates of the Utah Power & Light Company to its other customers, nor to enable the Utah Power & Light Company to earn sufficient money to pay its operating expenses and depreciation reserve charges, and some return by way of dividend to its stockholders, (though possibly not a full return of 8%); and no consideration of any rights of the stockholders of the Utah Power & Light Company can enter into the public weal as affected by said contract; and even if said contract was a bad bargain, which the Utah Copper Company denies, nevertheless the police power of the state is not a thing to be or that can constitutionally be exercised for the purpose of relieving such stockholders from bargains which turn out to be unfortunate to them.

55. Said Commission erred in making and entering said decision and order of October 18, 1920, herein, in that and because as applied to the service rendered the Utah Copper Company by the Utah Power & Light Company the rates, charges, terms and provisions of Schedule 43 of the Utah Power & Light Company, or any other existing schedule, are unjust, unreasonable, too high, extortionate and confiscatory.

Wherefore, the Utah Copper Company asks that it be allowed and granted a rehearing in the above entitled cause and proceeding for the foregoing reasons and on the foregoing grounds, and each of them, said decision and order of October 18, 1920, herein, be set aside, vacated and annulled, and suspended pending the determination of this application for a rehearing with respect thereto.

Dated this 21st day of October, 1920.

UTAH COPPER COMPANY,
By (Signed) L. S. CATES,
Assistant General Manager.

And by

DICKSON, ELLIS,
LUCAS & ADAMSON,
Its Attorneys.

Office and P. O. Address,
1003 Kearns Building,
Salt Lake City, Utah.

EXHIBIT "O."
BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH.

Case No. 230.

In the Matter of the Investigation of Special Contracts
of the Utah Power & Light Company for Electric
Service.

REPORT AND ORDER OF THE COMMISSION
On Petitions for Rehearing.

By the Commission:

Petitions for rehearing have been filed in this case by the following contract holders:

Utah Copper Company.	Utah Hotel.
Standard Coal Company.	Salt Lake & Utah R. R. Co.
Portland Cement Co. of Utah.	Denver & Rio Grande R. R. Co.
Samuel H. Auerbach (Auerbach Co.).	Salt Lake City Union Depot and Railroad Co.
Ogden Portland Cement Co.	The Deseret News.
Union Portland Cement Co.	Salt Lake Terminal Co.
Utah Iron & Steel Co. (Utah Steel Corporation).	Oregon Short Line Railroad Co.
U. S. Fuel Co.	Utah Idaho Central R. R. Co.
U. S. Smelting Ref. & Min. Co.	Bamberger Electric Railroad Co.
Board of Canal Presidents (Associated Canals Company).	(Salt Lake & Ogden Ry. Co.).
Utah Metal & Tunnel Company.	Progress Company.
Snake Creek Mg. & Tunnel Co.	Salt Lake Pressed Brick Co.
Silver King Cons. Mining Co.	Judge Mining & Smelting Co.
Chief Cons. Mining Co.	Daly-Judge Mining Company.
Daly-West Mining Company.	Utah Apex Mining Company.
Silver King Coalition Mines Co.	Eagle & Blue Bell Mg. Co.
	Utah Cons. Mining Co.
	Bingham Mines Company.

The Commission has examined these petitions and finds no grounds for granting the rehearing requested.

The Commission deems its original report and order to sufficiently cover the questions presented in said petitions, but in case there should be any doubt as to the position of the Commission on the points raised, the Commission wishes to make distinct record that it found the facts to be:

That the rates set forth in the special contracts under consideration wherein they are different from those set out in the regular schedule applicable to like service, are discriminatory and preferential.

That the continuance in effect of these special discriminatory contract rates places an undue burden upon that part of the power consuming public that does not enjoy said special contract rates.

That the published and filed schedules and tariffs of the Power Company now on file with this Commission, purport to be, and by their terms are, applicable to the service rendered to the holders of the special contracts

and are the schedules which are open to and actually used by the public generally for similar service, and unless and until changed, amended, superseded, or annulled by this Commission, should be applied to all service to which by their terms they are applicable.

The foregoing findings were fundamental implications of the entire proceedings in this case, and are implied in the order of the Commission originally issued herein. This report is not intended to make any additional or new findings, but simply to clearly express the findings which were implied in the original report, and to indicate the Commission's attitude on some questions raised herein.

It is therefore, ordered, that all petitions for rehearing be, and they are hereby, denied.

Dated at Salt Lake City, Utah, this 9th day of November, A. D. 1920.

(Signed) JOSHUA GREENWOOD,
HENRY BLOOD,
WARREN STOUTNOUR,

(SEAL)

Commissioners.

(Signed) T. E. BANNING,
Secretary.

IN THE SUPREME COURT OF THE STATE OF
UTAH.

UTAH COPPER COMPANY,	}	Order for Writ of Certiorari or Review.
a Corporation,		
Plaintiff,		
vs.		
PUBLIC UTILITIES COMMIS-	}	
SION OF UTAH,		
Defendant.		

Upon reading and filing the annexed affidavit of John M. Hayes, on application for Writ of Certiorari or Review, together with the annexed petition and motion for Writ of Certiorari or Review, it is hereby ordered that said petition is hereby granted and the Writ of Certiorari or Review thereby sought, is hereby allowed, and that a Writ of Certiorari or Review issue out of and under the seal of this, the Supreme Court of the State of Utah, in accordance with the prayer of said annexed affidavit and petition, and that said writ be returnable before this, the Supreme Court of the State of Utah, at the court room thereof, in Salt Lake City, Utah, on the 16th day of December, 1920, at ten (10) o'clock a. m.

Dated this 2nd day of December, 1920.

By order of the Court.

H. W. GRIFFITH.

IN THE SUPREME COURT OF THE STATE OF
UTAH.

UTAH COPPER COMPANY, a Corporation,	Plaintiff,	} Writ of Certiorari or Review.
vs.		
PUBLIC UTILITIES COMMIS- SION OF UTAH,	Defendant.	

*The State of Utah to the Public Utilities Commission of
Utah, Greeting:*

WHEREAS, The above-named plaintiff, the Utah Copper Company, has filed in this court in this cause its affidavit and petition (copies of which are hereto attached and made part hereof and herewith served upon you) asking for the issuance out of and allowance by this court of a Writ of Certiorari or Review as therein stated; and the Court having examined said affidavit and petition, and being fully advised in the premises, and the Court being satisfied and willing to be certified of said proceedings, decisions and orders in said affidavit and petition mentioned, and described, and having ordered that a Writ of Certiorari or Review issue out of and be allowed as sought in and by said affidavit and petition;

We do therefore hereby command and direct you, the Public Utilities Commission of Utah, that you certify and return into this court on or before ten (10) o'clock a. m. on the 16th day of December, 1920, your record in Cases No. 230 and 248, before the Public Utilities Commission of Utah, entitled respectively "In the Matter of the In-

vestigation of Special Contracts of the Utah Power & Light Company, for Electric Service," and "In the Matter of the Application of Utah Power & Light Company for permission to increase its power rates," including a transcript of testimony and evidence, together with all exhibits or copies thereof introduced, and of all pleadings, records, proceedings, decisions, orders, proofs and papers of every nature whatever in said causes numbered 230 and 248, or concerning or relating to the same, together with all data, writings, memoranda, schedules and tariffs, of which you took judicial notice in said causes, to the end that this Court may be certified of and review all the proceedings, decisions and orders in said causes, and may further act thereon as of right and according to law ought to be done, and, if proper, reverse, set aside, cancel and annul the same. And have you then and there this Writ.

Witness, the Honorable Supreme Court of the State of Utah and the Justices thereof, this 2nd day of December, 1920.

H. W. GRIFFITH,

(SEAL) Clerk of the Supreme Court of the State
of Utah.

IN THE SUPREME COURT OF THE STATE OF
UTAH.

UTAH COPPER COMPANY,
a Corporation,
vs.
PUBLIC UTILITIES COMMIS-
SION OF UTAH,
Defendant.

Plaintiff,

Defendant.

No. 3582.
Proof of Service.

Filed Dec. 2, 1920.

H. W. GRIFFITH,
Clerk Supreme Court, Utah.

Service of a copy of the within Writ of Certiorari or Review, and order for Writ of Certiorari or Review, and Petition and Motion for Certiorari or Writ of Review, and affidavit on application for Certiorari or Writ of Review, on the above named defendant, the Public Utilities Commission of Utah, on the 2nd day of December, 1920, is hereby admitted.

PUBLIC UTILITIES COMMISSION OF UTAH,

By T. E. BANNING,
Secretary of the Public Utilities Commission
of Utah.

IN THE SUPREME COURT OF THE STATE OF
UTAH.

UTAH COPPER COMPANY,

a Corporation,

Plaintiff,

vs.

PUBLIC UTILITIES COMMIS-
SION OF UTAH,

Defendant.

No. 3582.
Stipulation.

It is hereby stipulated and agreed by and between the above named plaintiff, the Utah Copper Company, and the Utah Power & Light Company, a corporation organized and existing under and by virtue of the laws of the State of Maine, and doing business in the State of Utah, by and through their respective attorneys, that while the said Utah Power & Light Company did not institute the proceedings in case No. 230 before the Public Utilities Commission of the State of Utah, mentioned in the papers filed in the above entitled court in the above entitled cause, but was named as one of the parties defendant therein in the original order to show cause of said Commission therein, and did appear and participate therein in response to said order, hence said Utah Power & Light Company is an interested and proper party to the above entitled cause, as it was an interested and proper party to the proceedings before the said Commission, and accordingly the said Utah Power & Light Company hereby consents to be made a party defendant to the above entitled

proceeding or action, in the above entitled court, and hereby enters its appearance as such party defendant, and hereby further acknowledges the service upon it on the second day of December, 1920, of a copy of the Writ of Certiorari or Review, and the order for Writ of Certiorari or Review, and the petition and motion for Certiorari or Writ of Review and affidavit on application for Certiorari or Writ of Review, filed in the above entitled court in the above entitled cause; and,

It is further stipulated and agreed that an order making said Utah Power & Light Company a party defendant of record in the above entitled cause in the above entitled court and entering its appearance therein, may be made and entered without any or further notice to either of the parties hereto.

Dated this 3d day of December, 1920.

UTAH COPPER COMPANY,

Plaintiff.

By DICKSON, ELLIS,

LUCAS & ADAMSON,

Its Attorneys.

UTAH POWER & LIGHT COMPANY,

By J. F. MacLANE and C. C. PARSONS,

Its Attorneys.

IN THE SUPREME COURT OF THE STATE OF
UTAH.

UTAH COPPER COMPANY,
a Corporation,

Plaintiff,

vs.

PUBLIC UTILITIES COMMISS-
SION OF UTAH,

Defendant.

No. 3582.
Order Making Utah
Power & Light Com-
pany a Party.

On reading and filing the annexed stipulation bearing date the third day of December, 1920, by and between the Utah Copper Company, and the Utah Power & Light Company,

It is hereby ordered, that the said Utah Power & Light Company, be, and the same is hereby, made a party defendant of record in the above entitled cause, and its appearance duly entered herein.

Dated this third day of December, 1920.

By the Court:

E. E. CORFMAN,

Chief Justice of the Supreme Court of the State of Utah.

Received copy of above order and within stipulation on this third day of December, 1920.

PUBLIC UTILITIES COMMISSION
OF UTAH,

By T. E. BANNING,

Secretary.